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Contents

Federal Register
Vol. 81, No. 188
Wednesday, September 28, 2016

Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66620–66621

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66661–66662

Coast Guard
RULES
Safety Zones:
  Main Branch of the Chicago River, Chicago, IL, 66530–66532

Commerce Department
See Economic Development Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Limitations of Duty and Quota Free Imports:
  Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric, 66640–66641

Commodity Futures Trading Commission
NOTICES
Committee Renewals:
  Global Markets Advisory Committee, 66641

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66641–66642

Economic Development Administration
NOTICES
Meetings:
  National Advisory Council on Innovation and Entrepreneurship, 66622–66623

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Borrower Defense to Loan Repayment Form, 66642–66643
  FFEL/Direct Loan/Perkins Military Service Deferment/Post-Active Duty Student Deferment Request, 66644
  Middle Grades Longitudinal Study of 2017–18 Operational Field Test and Recruitment for Main Study Base-Year, 66644–66645
  National Teacher and Principal Survey of 2017–2018 Preliminary Field Activities, 66643–66644

Energy Department
See Federal Energy Regulatory Commission
RULES
Coordination of Federal Authorizations for Electric Transmission Facilities, 66500–66513

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Georgia; Prong 4–2008 Ozone, 2010 NO2, SO2, and 2012 PM2.5, 66538
  Oklahoma; Revisions to Major New Source Review Permitting, 66532–66538
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Mississippi; Interstate Transport (Prongs 1 and 2) for the 2010 1-hour NO2 Standard, 66591–66596
  Ohio; Redesignation of the Columbus, OH Area to Attainment of the 2008 Ozone Standard, 66578–66591
  Reclassification of the Sheboygan, WI Area to Moderate Nonattainment for the 2008 Ozone NAAQS, 66617–66619
  Redesignation of the Ohio Portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana Area to Attainment of the 2008 Ozone Standard, 66602–66617
  Tennessee; Regional Haze Progress Report, 66596–66602
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment, 66657–66658
  Recordkeeping for Institutional Dual Use Research of Concern (iDURC) Policy Compliance, 66658–66659
Registration Reviews:
  Sulfonylurea Herbicides; Reopening of Comment Period, 66656–66657

Farm Service Agency
RULES
Methodology and Formulas for Allocation of Loan and Grant Program Funds; Correction, 66500

Federal Aviation Administration
RULES
Airworthiness Directives:
  Airbus Airplanes, 66518–66523
  Bombardier, Inc. Airplanes, 66516–66518
  REIMS AVIATION S.A. Airplanes, 66524–66526
  Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes, 66513–66516

PROPOSED RULES
Airworthiness Directives:
  The Boeing Company Airplanes, 66553–66555
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Flight Operational Quality Assurance Program, 66716–66717
Disposals of Aeronautical Properties:
  Everett-Stewart Regional Airport, Union City, TN (UCY), 66717–66718
Hazardous Materials:
  Emergency Restriction/Prohibition Order, 66713–66716
Non-Aeronautical Land-Use Changes:
  Oceano County Airport, Oceano, San Luis Obispo County, CA, 66717

Federal Communications Commission

RULES
Railroad Police Officers to Access Public Safety Interoperability and Mutual Aid Channels, 66538–66544
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66659–66661

Federal Energy Regulatory Commission

PROPOSED RULES
Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Reliability Standards, 66555–66562
NOTICES
Combined Filings, 66645–66649
Commission Requirements for Review:
  Transactions under Section 203 of the Federal Power Act and Market-Based Rate Applications under Section 205 of the Federal Power Act, 66649–66656

Federal Housing Finance Agency

PROPOSED RULES
Federal Home Loan Bank Membership for Non-Federally-Insured Credit Unions, 66545–66553

Federal Maritime Commission

NOTICES
Agreements Filed, 66661

Federal Motor Carrier Safety Administration

NOTICES
Commercial Driver's License Standards:
  Idaho Transportation Department; Application for Exemption, 66730
Hours of Service of Drivers; Exemption Applications:
  Transco, Inc., 66734–66736
Parts and Accessories Necessary for Safe Operation, Exemption Applications:
  International Institute of Towing and Recovery, 66728–66730
Qualification of Drivers; Exemption Applications:
  Diabetes Mellitus, 66733–66734
  Vision, 66718–66728, 66731–66732

Food and Drug Administration

RULES
Guidance for Industry:
  Use of the Term "Healthy" in the Labeling of Human Food Products, 66527–66529
PROPOSED RULES
Use of the Term "Healthy" in the Labeling of Human Food Products, 66562–66565
NOTICES
Determination of Regulatory Review Periods:
  IONSYS, 66662–66664

Food and Nutrition Service

RULES
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 66487–66499

Forest Service

NOTICES
Meetings:
  Eastern Region Recreation Resource Advisory Committee, 66621–66622
  Lake Tahoe Basin Federal Advisory Committee, 66622
  Land Between The Lakes Advisory Board, 66621

Health and Human Services Department

See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  The Division of Independent Review Grant Reviewer Recruitment Form, 66664–66665

Homeland Security Department

See Coast Guard
See Transportation Security Administration
See U.S. Customs and Border Protection

Housing and Urban Development Department

PROPOSED RULES
Project Approval for Single-Family Condominiums, 66565–66576
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Fair Housing: Assessment Tool for States and Insular Area, 66754–66782
  Rental Assistance Demonstration Documents, 66672–66688

Interior Department

See Land Management Bureau

Internal Revenue Service

PROPOSED RULES
Guidance under Section 851 Relating to Investments in Stock and Securities, 66576–66578
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66737–66740, 66743–66746, 66748–66750
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions, 66741–66742
  Effectively Connected Income and the Branch Profits Tax, 66747
  Offshore Voluntary Disclosure Program, 66742–66743

  Regulation Project, 66738–66741
  Revenue Procedure, 66741, 66746–66747
  Treatment of Acquisition of Certain Financial Institutions, 66750

Joint Board for Enrollment of Actuaries

NOTICES
Charter Renewals:
  Advisory Committee on Actuarial Examinations, 66688–66689

Justice Department

NOTICES
Proposed Consent Decrees under CERCLA, 66689
Proposed Consent Decrees under CERCLA, the Clean Water Act, and the Oil Pollution Act, 66689–66690
Proposed Consent Decrees under the Oil Pollution Act, 66690–66691
Proposed Stipulations and Settlement Agreements under the Clean Air Act, 66689

Land Management Bureau

NOTICES
Meetings:
  California Desert District Advisory Council, 66688

Millennium Challenge Corporation

NOTICES
Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2017, 66691–66698

National Archives and Records Administration

NOTICES
Records Schedules, 66698–66699

National Highway Traffic Safety Administration

NOTICES
Petitions for Inconsequential Noncompliance; Approvals:
  Certain Nonconforming Motor Vehicles are Eligible for Importation, 66736–66737

National Institute of Standards and Technology

NOTICES
Meetings:
  Advisory Committee on Earthquake Hazards Reduction, 66624
  Information Security and Privacy Advisory Board, 66624–66625

National Institutes of Health

NOTICES
Meetings:
  Center for Scientific Review, 66668–66669
  National Center for Advancing Translational Sciences, 66667–66668
  National Institute of Biomedical Imaging and Bioengineering, 66665–66666
  National Institute of Diabetes and Digestive and Kidney Diseases, 66665–66666
National Heart, Lung, and Blood Institute Chronic Obstructive Pulmonary Disease National Action Plan, 66666–66667
Senior Executive Service 2016 Performance Review Board, 66665

National Oceanic and Atmospheric Administration

NOTICES
Environmental Assessments; Availability, etc.:
  Issuance of Incidental Take Authorizations in Cook Inlet, AK, 66639–66640
Permits:
  Marine Mammals; File No. 15330, 66627
  Marine Mammals; File Nos. 19436 and 19592, 66627
Takes of Marine Mammals Incidental to Specified Activities:
  Pier Replacement Project, 66628–66639
Takes of Marine Mammals:
  Dolphin-safe Tuna Products, 66625–66627

National Science Foundation

NOTICES
Meetings:
  Review Panel for Materials Research, 66699
Permits Issued under the Antarctic Conservation Act, 66699

Nuclear Regulatory Commission

NOTICES
Environmental Impact Statements; Availability, etc.:
  Fermi 2 Nuclear Power Plant License Renewal Applications, 66700–66701
Meetings:
  Advisory Committee on Reactor Safeguards, 66699–66700

Personnel Management Office

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  OPM.GOV Feedback Tab Survey, 66701–66702
  We Need Information About Your Missing Payment—OPM Form RI 38–31, OMB No. 3206–0187, 66702

Presidential Documents

PROCLAMATIONS
Special Observances:
  Gold Star Mother's and Family's Day (Proc. 9502), 66789–66790
  National Hunting and Fishing Day (Proc. 9500), 66783–66786
  National Public Lands Day (Proc. 9501), 66787–66788

Rural Business-Cooperative Service

RULES
Methodology and Formulas for Allocation of Loan and Grant Program Funds; Correction, 66500

Rural Housing Service

RULES
Methodology and Formulas for Allocation of Loan and Grant Program Funds; Correction, 66500

Rural Utilities Service

RULES
Methodology and Formulas for Allocation of Loan and Grant Program Funds; Correction, 66500

Securities and Exchange Commission

RULES
Political Contributions by Certain Investment Advisers:
  Ban on Third-Party Solicitation; Order with Respect to FINRA Rule 2030, 66526
  Ban on Third-Party Solicitation; Order with Respect to MSRB Rule G–37, 66526–66527

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:
  Chicago Board Options Exchange, Inc., 66706–66708
  NASDAQ BX, Inc., 66708–66711
  The Nasdaq Stock Market LLC, 66702–66705
Suspension of Trading Orders:
  A.A. Importing Co., Inc., ACM Corp., Alleghany Pharmacal Corp., et al., 66705–66706

Small Business Administration

NOTICES

Disaster Declarations:
  Kansas, 66711
  Maryland, 66711
  Pennsylvania, 66711–66712

State Department

NOTICES

Certifications Pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 66712
Culturally Significant Objects Imported for Exhibition:
  Nuit d'ete (Summer Night), 66713
  World War I and American Art, 66712

Transportation Department

See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Transportation Security Administration

NOTICES

Legal Interpretation:
  Field of Transportation, 66671–66672

Treasury Department

See Internal Revenue Service

RULES

Gulf Coast Restoration Trust Fund, 66529–66530

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66750–66751
Applications:
  Multiemployer Pension Plan, 66751–66752

U.S. Customs and Border Protection

NOTICES

Accreditation and Approval as a Commercial Gauger and Laboratory:
  Inspectorate America Corp., 66669–66670
  SGS North America, Inc., 66670–66671
  Viswa Lab, 66671

Separate Parts In This Issue

Part II

Housing and Urban Development Department, 66754–66782

Part III

Presidential Documents, 66783–66790

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9500.................................66785
9501.................................66787
9502.................................66789

7 CFR

210...................................66487
215...................................66487
220...................................66487
225...................................66487
226...................................66487
227...................................66487
235...................................66487
240...................................66487
246...................................66487
247...................................66487
248...................................66487
249...................................66487
253...................................66487
272...................................66487
273...................................66487
274...................................66487
276...................................66487
277...................................66487
1940.................................66500

10 CFR

900...................................66500

12 CFR

Proposed Rules:

1263.................................66545

14 CFR

39 (4 documents) 66513,
66516, 66518, 66524

Proposed Rules:

39.....................................66553

17 CFR

275 (2 documents) 66526

18 CFR

Proposed Rules:

40.....................................66555

21 CFR

101...................................66527

Proposed Rules:

101...................................66562

24 CFR

Proposed Rules:

203...................................66565
234...................................66565

26 CFR

Proposed Rules:

1.......................................66576

31 CFR

34.....................................66529

33 CFR

165...................................66530

40 CFR

52 (2 documents) 66532,
66538

Proposed Rules:

52 (4 documents) 66578,
66591, 66596, 66602
81 (3 documents) 66578,
66602, 66617

47 CFR

90.....................................66538

Rules and Regulations

Federal Register
Vol. 81, No. 188
Wednesday, September 28, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, 227, 235, 240, 246, 247, 248, 249, 253, 272, 273, 274, 276, and 277

RIN 0584–AE42

Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This rule amends FNS regulations to implement the Department of Agriculture final guidance of USDA-specific requirements in the Federal Agency Regulations for Grants and Agreements.

DATES: Effective September 28, 2016.

FOR FURTHER INFORMATION CONTACT: Lael Lubing, Food and Nutrition Service, Financial Management, Grants Division, 3101 Park Center Drive, Room 732, Alexandria, VA or *lael.lubing@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule amends FNS regulations to implement the Department of Agriculture final guidance of USDA-specific requirements at 2 CFR part 400 on December 19, 2014 (79 FR 75871). Prior to that, on December 26, 2013, the Office of Management and Budget (OMB) published "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" in 2 CFR part 200 (78 FR 78589). OMB's final guidance at 2 CFR part 200 followed a Notice of Proposed Guidance issued February 1, 2013, and an Advanced Notice of Proposed Guidance issued February 28, 2012. The OMB final guidance incorporated feedback received from the public in response to those earlier issuances. Additional supporting resources are available from the Council on Financial Assistance Reform at *www.cfo.gov/COFAR.* In accordance with the good cause exception under the APA, it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 because the provisions set forth in this rulemaking are a non-discretionary implementation of USDA requirements codified at 2 CFR part 400. The APA exempts from the prior notice and opportunity for comment requirements rules "relating to Agency management or personnel or to public property, loans, grants, benefits, or contracts" (5 U.S.C. 553 (a)(2)).

Currently, references appear throughout the FNS regulations to the OMB guidance consolidated under the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and the USDA implementing regulations in Title 2, of the CFR. There are over 100 references throughout 19 Parts of the FNS regulations that must be revised to accurately reference the revised OMB and USDA regulations. FNS is therefore proposing nomenclature revisions to the following Parts of Title 7: 210, 215, 220, 225, 226, 227, 235, 240, 246, 247, 248, 249, 253, 272, 273, 274, 276, and 277. The revisions will remove the following references, and other associated outdated references, and replace them as appropriate:

References:
7 CFR Part 3015
7 CFR Part 3016
7 CFR Part 3017
7 CFR Part 3018
7 CFR Part 3019
7 CFR Part 3021
7 CFR Part 3052
OMB Circular A–133
OMB Circular A–102
OMB Circular A–87
SF–269

As noted above, the final OMB guidance incorporated feedback received from the public.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with USDA Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in FNS program(s).

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health.

7 CFR Part 215

Grant programs—education, Grant programs—health.

7 CFR Part 220

Grant programs—education, Grant programs—health.

7 CFR Part 225

Grant programs—health.

7 CFR Part 226

Grant programs, Grant programs—health.

7 CFR Part 227

Grant programs—education, Grant programs—health.

7 CFR Part 235

Grant programs—education, Grant programs—health.

7 CFR Part 240

Grant programs—education, Grant programs—health.

7 CFR Part 246

Grant programs—health, Grant programs—social programs.

7 CFR Part 247

Grant programs—health, Grant programs—social programs.

7 CFR Part 248

Grant programs—social programs.

7 CFR Part 249

Grant programs—social programs.

7 CFR Part 253

Grant programs—social programs.

7 CFR Part 272

Grant programs—social programs.

7 CFR Part 273

Grant programs—social programs.

7 CFR Part 274

Grant programs—social programs.

7 CFR Part 276

Grant programs—social programs.

7 CFR Part 277

Grant programs—social programs.

Accordingly, 7 CFR parts 210, 215, 220, 225, 226, 227, 235, 240, 246, 247, 248, 249, 253, 272, 273, 274, 276, and 277 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§§ 210.5, 210.9, 210.19, 210.20, 210.22, 210.24, 210.25 [Amended]

■ 2. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
210.5	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

Section	Remove	Add
210.9	7 CFR part 3015 and 7 CFR part 3016, or 7 CFR part 3019, as applicable.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
210.19	7 CFR part 3015 and 7 CFR part 3016, or 7 CFR part 3019.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
210.22	Office of Management and Budget Circular A–133 and the Department's implementing regulations at 7 CFR part 3052. For availability of the OMB Circular mentioned in this paragraph, please refer to 5 CFR 1310.3.	2 CFR part 200, subpart F and Appendix XI (Compliance Supplement) and USDA implementing regulations 2 CFR part 400 and part 415.
210.22	7 CFR part 3015	2 CFR part 200, subpart F and Appendix XI, and USDA implementing regulations 2 CFR part 400 and part 415.
210.24	§§ 3016.43 and 3019.62 of this title	2 CFR 200.338 through 200.342.
210.25	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 3. In § 210.2:

■ a. Remove the definitions for *7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018; 7 CFR part 3019,* and *7 CFR part 3052;*

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Revise the definition for *Applicable credits.*

■ d. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions and revision read as follows:

§ 210.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

■ 4. In § 210.3:

■ a. Revise the last sentence of paragraph (b).

■ b. Revise the last sentence of paragraph (d).

The revisions read as follows:

§ 210.3 Administration.

* * * * *

(b) * * * Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; parts 235 and 245 of this chapter; parts 15, 15a, and 15b of this title, and 2 CFR part 200; USDA implementing regulations 2 CFR part 400 and part 415; and FNS instructions.

* * * * *

(d) * * * State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; part 245 of this chapter; parts 15, 15a, and 15b, and 3016 or 3019, as applicable, of this title and 2 CFR part 200; USDA implementing regulations 2 CFR part 400 and part 415 and FNS instructions.

■ 5. Revise § 210.21(a) and (b), and the introductory text of paragraph (c), to read as follows:

§ 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable requirements, concerning the procurement of all goods and services with nonprofit school food service account funds.

(b) *Contractual responsibilities.* The standards contained in this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements 2 CFR 200.236 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award are followed. A school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and in 2 CFR part 200, subpart D, as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.

* * * * *

§ 210.25 [Amended]

■ 6. In § 210.25, remove the words "or the parallel provisions of 7 CFR part 3019,".

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 7. The authority citation for 7 CFR part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

§§ 215.3, 215.11, 215.13, 215.15, 215.16 [Amended]

■ 8. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
215.3	7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019, and with.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400, subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415, and.
215.11	SF–269	FNS–777.
215.13	Office of Management and Budget Circular A–133 and the Department's implementing regulations at 7 CFR part 3052.	2 CFR part 200, subpart F, and Appendix XI, Compliance Supplement and USDA's implementing regulations 2 CFR part 400 and part 415.
215.15	at §§ 3016.43 and 3019.62 of this title	2 CFR 200.338 through 200.342.
215.16	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 9. In § 215.2:

■ a. Remove the definitions for *7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019,* and *7 CFR part 3052.*

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Revise the definition for Applicable credits.

■ d. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions and revision read as follows:

215.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

§ 215.13 [Amended]

■ 10. Amend § 215.13(a) by removing the last sentence.

■ 11. Revise § 215.14a (a) and (b), and the introductory text of paragraph (c), to read as follows:

§ 215.14a Procurement standards.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part and 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415, as applicable concerning the procurement of all goods and services with nonprofit school food service account funds.

(b) *Contractual responsibilities.* The standards contained in this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 200 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: Source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of 2 CFR 200.236 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award are followed. The school food authority or child care institution may use its own procurement procedures which reflect applicable State or local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415 as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.

* * * * *

§ 215.16 [Amended]

■ 12. In § 215.16, remove the words ", or the parallel provisions of 7 CFR part 3019, as applicable,".

PART 220—SCHOOL BREAKFAST PROGRAM

■ 13. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§§ 220.3, 220.13, 220.15, 220.18, 220.19 [Amended]

■ 14. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
220.3	7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019, and with.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415 and.
220.13	7 CFR Part 3015, and 7 CFR Part 3016 or 7 CFR Part 3019.	2 CFR part 200, subpart D and E, as applicable, and USDA implementing regulations 2 CFR part 400 and part 415.
220.15	Office of Management and Budget Circular A–133 and the Department's implementing regulations at 7 CFR part 3052. For availability of the OMB Circular mentioned in this paragraph, please refer to 5 CFR 1310.3.	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement, and USDA implementing regulations 2 CFR part 400 and part 415.
220.18	Departmental regulations at §§ 3016.43 and 3019.62 of this title.	2 CFR 200.338 through 342.
220.19	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 15. In § 220.2:

■ a. Remove the definitions for 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018; 7 CFR part 3019, and 7 CFR part 3052.

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Revise the definition for Applicable credits.

■ d. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions and revision read as follows:

§ 220.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

■ 16. Revise § 220.16 (a) and (b), and the introductory text of paragraph (c), to read as follows:

§ 220.16 Procurement standards.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

(b) *Contractual responsibilities.* The standards contained in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: Source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of 2 CFR 200.326 are followed. The school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part 2 CFR 200.326 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.

* * * * *

§ 220.19 [Amended]

■ 17. In § 220.19, remove the words ", or the parallel provisions of 7 CFR part 3019, as applicable,".

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 18. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

§§ 225.7, 225.8, 225.10, 225.17, 225.18 [Amended]

■ 19. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
225.7	7 CFR part 3015, and 7 CFR part 3016 or 7 CFR part 3019.	2 CFR part 200, subpart D and E, and USDA implementing regulations 2 CFR part 400 and part 415.
225.8	SF–269	FNS–777.
225.10	the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).	2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415.
225.10	7 CFR part 3015	2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415.
225.10	OMB Circular A–133 and the Department's implementing regulations at 7 CFR part 3052. (To obtain the OMB circular referenced in this paragraph, see 5 CFR 1310.3.).	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
225.17	7 CFR part 3016 or 7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
225.17	set forth in 7 CFR part 3016	set forth in 2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415.
225.17	set forth in 7 CFR part 3019	set forth in 2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415.
225.18	7 CFR part 3016 or 7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 20. In § 225.2:

■ a. Remove the definitions for *7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3019,* and *7 CFR part 3052.*

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions read as follows:

§ 225.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 21. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

§§ 226.4, 226.7, 226.10, 226.22, 226.24, 226.25 [Amended]

■ 22. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
226.4	7 CFR part 3016	2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415, as applicable.
226.6	parts 3015, 3016, and 3019 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.7	7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.7	SF–269	FNS–777.
226.7	parts 3015, 3016, and 3019 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.10	7 CFR part 3016 or 7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.22	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.22	7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

Section	Remove	Add
226.22	§ 3015.175	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
226.24	7 CFR part 3016 or 7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
226.25	7 CFR part 3016 or 7 CFR part 3019	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 23. In § 226.2:

■ a. Remove the definitions for *7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3019,* and *7 CFR part 3052;* and

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions read as follows:

§ 226.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

■ 24. Revise § 226.8(a) and (b) to read as follows:

§ 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels must be conducted in accordance with 2 CFR part 200, subpart F, Appendices X and XI, Data Collection Form and Compliance Supplement, respectively and USDA implementing regulations 2 CFR parts 400, 415 and 416. State agencies must establish audit policy for for-profit institutions. However, the audit policy established by the State agency must not conflict with the authority of the State agency or the Department to perform, or cause to be performed, audits, reviews, agreed-upon procedures engagements, or other monitoring activities.

(b) The funds provided to the State agency under § 226.4(j) may be made available to institutions to fund a portion of organization-wide audits made in accordance with 2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415. The funds provided to an institution for an organization-wide audit must be determined in accordance with 2 CFR part 200, subpart F and USDA implementing regulations 2 CFR part 400 and part 415.

* * * * *

PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

§§ 227.30, 227.31, 227.35, 227.42 [Amended]

■ 25. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
227.30	7 CFR part 3015	2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415, as applicable.
227.30	OMB Circular A–102 Attachment C	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
227.30	SF–269	FNS–777.
227.30	OMB Circular A–102, Attachment H	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
227.30	Federal Management Circular 74–4 and OMB Circular A–102, Attachment G.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
227.30	OMB Circular A–102, Attachments N and O, and Federal Management Circular 74–4.	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
227.30	OMB Circular A–102, Attachment E	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
227.31	OMB Circular A–102, Attachment G	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement.
227.35	SF–269	FNS–777.
227.42	OMB Circular A–102, Attachment L	2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 26. The authority citation for 7 CFR part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

§§ 235.3, 235.5, 235.6, 235.7, 235.8, 235.9, 235.11 [Amended]

■ 27. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
235.3	3015, and 3016	and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
235.5	Office of Management and Budget Circular A–87, Attachment B, to establish cost categories.	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
235.5	(SF) 269	FNS 777.
235.6	Office of Management and Budget Circular A–87	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
235.7	SF–269	FNS–777.
235.8	Office of Management and Budget Circular A–133, and the Department's implementing regulations at 7 CFR part 3052. (To obtain the OMB circular referenced in this definition, see 5 CFR 1310.3.).	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
235.9	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
235.11	SF–269	FNS–777.
235.11(a)	7 CFR part 3016	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
235.11(b)(5)(v)	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
235.11(d)	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 28. In § 235.2:

■ a. Remove the definitions for 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019, and 7 CFR part 3052; and

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The additions read as follows:

§ 235.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

PART 240—CASH IN LIEU OF DONATED FOODS

§ 240.9 [Amended]

■ 29. In § 240.9(c), remove the words "the Department's Uniform Federal Assistance Regulations (7 CFR part 3015)" and add, in their place, the words "2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415".

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 30. The authority citation for 7 CFR part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

§§ 246.3, 246.4, 246.12, 246.13, 246.14, 246.15, 246.17, 246.20, 246.24, 246.25 [Amended]

■ 31. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
246.3	7 CFR part 3016	2 CFR part 200, subpart A–F and USDA implementing regulations 2 CFR part 400 and part 415.
246.3	7 CFR part 3018	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415, and part 418.
246.4	7 CFR part 3017	2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417.
246.4	7 CFR part 3021	2 CFR part 180, Government-wide Requirements for Drug-Free Workplace (Financial Assistance) and USDA implementing regulation 2 CFR part 421.
246.12	*Part 3016*	*2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415.*
246.12	part 3016 of this title	2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415.
246.13	7 CFR part 3016	2 CFR part 200, subpart D, USDA implementing regulations 2 CFR part 400 and part 415.

Section	Remove	Add
246.14	7 CFR part 3016	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
246.15	§ 3016.25(g) of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
246.17	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
246.20	part 3052 of this title	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
246.24(b)	7 CFR part 3016	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
246.24(c)	7 CFR part 3016	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
246.24(d)	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
246.25	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 32. In § 246.2:

■ a. Remove the definitions for *7 CFR part 3016, 7 CFR part 3017, 7 CFR part 3018,* and *7 CFR part 3021;* and

■ b. Add a definition, in alphabetical order, for *2 CFR part 200.*

■ c. Add a definition, in alphabetical order, for *USDA implementing regulations.*

The addition and revisions read as follows:

§ 246.2 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

■ 33. Revise § 246.3(f) to read as follows:

§ 246.3 Administration.

* * * * *

(f) *Delegation to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, 15b), the regulations governing the administration of grants (2 CFR part 200, subpart A–F and USDA implementing regulations 2 CFR part 400 and part 415), Office of Management and Budget Circular A–130, and State agency and FNS guidelines and instructions.

■ 34. Revise § 246.6(b)(1) to read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to debarment and suspension requirements and if applicable, the lobbying restrictions of 2 CFR part 200, subpart E, and USDA implementing regulations 2 CFR part 400, part 415, and part 417, and FNS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

* * * * *

■ 35. Revise § 246.24(a) to read as follows:

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall ensure that subgrantees comply with the requirements for the nonprocurement debarment/suspension requirements and, if applicable, the lobbying restrictions as required in 2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension, 2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415, and part 417 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

* * * * *

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 36. The authority citation for 7 CFR part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113–79, 7 U.S.C. 612c note).

■ 37. In § 247.1:

■ a. Remove the definitions for *7 CFR part 3016, 7 CFR part 3019,* and *7 CFR part 3052;*

■ b. Add a definition, in alphabetical order, for *2 CFR part 200;* and

■ c. Add a definition, in alphabetical order, for *USDA implementing regulations*.

The additions read as follows:

§ 247.1 Definitions.

* * * * *

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

* * * * *

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

* * * * *

■ 38. Revise § 247.25(a) introductory text to read as follows:

§ 247.25 Allowable uses of administrative funds and other funds.

(a) *What are allowable uses of administrative funds provided to State and local agencies?* Administrative funds may be used for costs that are necessary to ensure the efficient and effective administration of the program, in accordance with 2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415, which set out the principles for determining whether specific costs are allowable. Some examples of allowable costs in CSFP include:

* * * * *

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ 39. The authority citation for 7 CFR part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

§§ 248.10, 248.11, 248.12, 248.13, 248.14, 248.15, 248.18, 248.21, 248.23 [Amended]

■ 40. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
248.10	7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and 415.
248.11	7 CFR part 3016	2 CFR part 200, subparts D and E and USDA implementing regulations 2 CFR part 400 and part 415.
248.12	7 CFR 3016.22	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
248.12	7 CFR part 3016	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
248.13	7 CFR 3016.25(g)(2)	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
248.14	7 CFR 3016.24	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
248.15	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
248.18	7 CFR part 3015, § 3016.26 or part 3051	2 CFR part 200, subpart F and Appendix XI Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
248.21(a)	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
248.21(b)	7 CFR part 3016	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
248.21(c)	7 CFR part 3016	2 CFR part 200, subpart D and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
248.21(d)	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
248.23	7 CFR part 3016	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 41. Revise § 248.3(b) to read as follows:

§ 248.3 Administration.

* * * * *

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (2 CFR part 200, subparts A, B, D, E and F and USDA implementing regulations 2 CFR part 400 and part 415), nonprocurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417), drug-free workplace (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace), and lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415 and part 418); and, Office of Management and Budget Circular A–130, FNS guidelines, and Instructions issued under the FNS Directives Management System. The State agency shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. Pursuant to section 17(m)(2) of the CNA, State agencies may operate the FMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

* * * * *

■ 42. Revise § 248.22 to read as follows:

§ 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency shall ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417), drug-free workplace (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace), and the Department's regulations governing restrictions on lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415 and part 418), where applicable.

PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

■ 43. The authority citation for 7 CFR part 249 continues to read as follows:

Authority: 7 U.S.C. 3007.

§§ 249.2, 249.3, 249.10, 249.11, 249.12, 249.13, 249.15, 249.18, 249.21, 249.23 [Amended]

■ 44. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
249.2	§ 3016.3 of this chapter	2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, subpart A, Acronyms and Definitions and USDA implementing regulations 2 CFR part 400 and part 415.
249. 3	part 3016 of this title	2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and USDA implementing regulations 2 CFR part 400 and part 415.
249.3	part 3017 of this title	2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417.
249.3	part 3021 of this title	2 CFR part 182, Government-wide Requirements for Drug-Free Workplace.
249.3	part 3018 of this title	2 CFR part 200, subpart E, Cost Principles; and USDA implementing regulations 2 CFR part 400, part 415, and part 418.
249.10	part 3016 of this title	2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.
249.11	part 3016 of this title, a claim	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415, a claim.
249.12	part 3016.22 of this title	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
249.12	part 3016 of this title	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
249.12	part 3016 of this title or this Part	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
249.13	part 3016.25(g)(2) of this title	2 CFR part 200, subpart D, Post Federal Award Requirements and USDA implementing regulations 2 CFR part 400 and part 415.
249.15	part 3016 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
249.18	parts 3015, 3016 (§ 3016.26 of this title), or 3051 of this title.	2 CFR part 200, subpart F, Audit Requirements and USDA implementing regulations 2 CFR part 400 and part 415.
249.21(a)	part 3016 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
249.21(b)	part 3016 of this title	2 CFR part 200, subpart D; Appendix II Contract Provisions for Non-Federal Entity Contracts Under Federal Awards; and USDA implementing regulations 2 CFR part 400 and part 415.
249.21(d)	part 3016 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
249.23	part 3016 of this title	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 45. Revise § 249.22 to read as follows:

§ 249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency must ensure compliance with the requirements of FNS' regulations governing nonprocurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417) and drug-free workplace (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace), as well as FNS' regulations governing restrictions on lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415, and part 418), where applicable.

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

§§ 253.5 and 253.11 [Amended]

■ 46. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
253.5	SF–269	SF–425.
253.11	7 CFR part 3015, Subpart V	2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415.
253.11	OMB Circular No. A–102, Attachment K	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
253.11	SF–269	SF–425.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§§ 272.1 and 272.2 [Amended]

■ 47. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
272.1	OMB Circular A–87 (2 CFR Part 225)	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
272.2	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 48. The authority citation for 7 CFR part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 273.7 [Amended]

■ 49. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
273.7(d)(7)	SF–269	SF–425 using FNS–778/FNS–778A worksheet.

■ 50. Revise § 273.7(l)(4) to read as follows:

§ 273.7 Work provisions.

* * * * *

(l) * * *

(4) *Reporting.* State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to employers as a wage subsidy on the FNS–388, State Issuance and Participation Estimates; FNS–388A, Participation and Issuance by Project Area; FNS–46, Issuance Reconciliation Report; and SF–425, using FNS–778 worksheet, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–425 using FNS–778/FNS–778A worksheet, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

* * * * *

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

■ 51. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 274.1 [Amended]

■ 52. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
274.1	the Office of Management and Budget (OMB) Circular A–133 Compliance Supplement.	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement, and USDA implementing regulations 2 CFR part 400 and part 415.
274.1	General Accountability Office	Government Accountability Office.
274.1	OMB Circular A–133	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
274.1	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*) in determining and claiming allowable costs for the EBT system.	2 CFR part 200, subparts D and E and USDA implementing regulations 2 CFR part 400 and part 415, as applicable.

§ 274.1 [Amended]

■ 53. Amend § 274.1(i)(2)(i), by removing the last sentence.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

■ 54. The authority citation for 7 CFR part 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 276.4 [Amended]

■ 55. In § 276.4(d), remove the words "OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*)" and add, in their place, the words "2 CFR part 200, subparts D and E and USDA implementing regulations 2 CFR part 400 and part 415".

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§§ 277.5, 277.6, 277.9, 277.11, 277.13, 277.16, 277.17, 277.18 [Amended]

■ 56. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
277.5	OMB Circular A–102, Attachment J	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
277.6	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
277.9	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.
277.11	7 CFR part 3015	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
277.11	Form SF–269	SF–425, using FNS–778/FNS–778A worksheet.
277.11(d)(1)	SF–269 report,	SF–425 report, using FNS–778/FNS–778A worksheet.
277.11(d)(5)	SF–269	SF–425, using FNS–778/FNS–778A worksheet.
277.13	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
277.16	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
277.17	OMB Circular A–102, Attachment P	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
277.17	Attachment H of OMB Circular A–102	2 CFR part 200, subpart F and Appendix XI, Compliance Supplement and USDA implementing regulations 2 CFR part 400 and part 415.
277.17	OMB Circular A–102, Attachment O	2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.
277.18	OMB Circular A–87 (available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*).	2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400 and part 415.

Dated: August 17, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–21760 Filed 9–27–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN 0570–AA30

Methodology and Formulas for Allocation of Loan and Grant Program Funds; Correction

AGENCY: Rural Housing Sevice, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds'' to provide reference to the Rural Business Development Program, which replaced the Rural Business Enterprise Grant program and the Rural Business Opportunity Grant program.

DATES: Effective on September 28, 2016.

FOR FURTHER INFORMATION CONTACT: Kristi Kubista-Hovis, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 3226, Washington, DC 20250–3225; telephone (202) 720–0424; *email kristi.kubista-hovis@wdc.usda./gov.*

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Act of 2014 (2014 Farm Bill) directed the Agency to combine the Rural Business Enterprise Grant (RBEG) program and the Rural Business Opportunity Grant (RBOG) program into a single new program entitled the Rural Business Development Grant (RBDG) program. The Agency issued an interim rule with request for comment on March 25, 2015 (80 FR 15665) establishing the RBDG program and removing the applicable provisions associated with the RBEG and RBOG programs. In the interim rule, the Agency inadvertently did not update the title to 7 CFR 1940.588 to reflect the replacement of the RBEG and RBOG programs with the new RBDG program. To correct this oversight, the Agency is revising the title to 7 CFR 1940.588. This correction has no substantive effect on how State allocations are made for the RBDG program.

Need for Correction

As found in the Code of Federal Regulations, the title to 7 CFR 1940.588 contains reference to two programs (*i.e.,* RBEG and RBOG) that no longer exist as stand-alone programs and does not reference their replacement program (*i.e.,* the RBDG program). This technical change is necessary to claify how the Agency allocates funds for the RBDG program and to remove reference to programs that no longer exist.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Accordingly, 7 CFR part 1940 is corrected by making the following correcting amendment:

PART 1940—GENERAL

■ 1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

■ 2. Revise the heading for § 1940.588 to read as follows:

§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Development Grants, and Intermediary Relending Program.

* * * * *

Dated: September 9, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

Dated: September 16, 2016.

Alexis M. Taylor,

Deputy Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2016–23228 Filed 9–27–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901–AB36

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the Federal Power Act (FPA). The amendments are intended to improve the pre-application procedures and result in more efficient processing of applications.

DATES: This final rule will become effective November 28, 2016. This rule contains a collection of information requirement subject to OMB approval under the Paperwork Reduction Act. DOE has submitted the collection to OMB for approval and will provide separate notice in the **Federal Register** of OMB approval and the OMB control number.

FOR FURTHER INFORMATION CONTACT: Julie A. Smith, Ph.D., U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE–20, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585; 202–586–7668; or *oeregs@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms, acronyms, and abbreviations are defined as follows:

CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DOE	Department of Energy
EIS	Environmental Impact Statement
E.O.	Executive Order
EPAct	Energy Policy Act of 2005
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
FR	Federal Register
IIP	Integrated Interagency Pre-Application
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
OMB	Office of Management and Budget
PM	Presidential Memorandum
PMA	Federal Power Marketing Administration
RFI	Request for Information
RRTT	Rapid Response Team for Transmission
RTO	Regional Transmission Operators

I. Background
II. Discussion of Final Rule and Responses to Comment
  A. General
  B. Applicability
  C. Definitions
  D. Integrated Interagency Pre-Application (IIP) Process
  E. Selection of NEPA Lead Agency
  F. IIP Process Administrative File
III. Regulatory Review
  A. Executive Orders 12866 and 13563
  B. National Environmental Policy Act

C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act of 1995
F. Treasury and General Government Appropriations Act, 1999
G. Executive Order 13132
H. Executive Order 12988
I. Treasury and General Government Appropriations Act, 2001
J. Executive Order 13211
K. Congressional Review Act
IV. Approval of the Office of the Secretary

I. Background

In this final rule, DOE establishes a simplified Integrated Interagency Pre-application (IIP) process for the siting of electric transmission facilities, as described in Section II. This process is established pursuant to DOE's authority under section 216(h) of the Federal Power Act (16 U.S.C. 791–828c) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. section 216(h) of the FPA (16 U.S.C. 824p(h)), "Coordination of Federal Authorizations for Transmission Facilities," provides for DOE to coordinate all Federal authorizations and related environmental reviews needed for siting certain interstate electric transmission projects, including National Environmental Policy Act of 1969 (NEPA) reviews. Specifically, section 216(h)(3) requires the Secretary, to the maximum extent practicable under Federal law, to coordinate the Federal authorization and review process with any Indian tribes, multi-state entities, and state agencies that have their own separate permitting and environmental reviews. Section 216(h)(4)(C) further requires that DOE establish an expeditious pre-application mechanism to allow project proponents to confer with Federal agencies involved, and for each such agency to communicate to the proponent any information needs relevant to a prospective application and key issues of concern to the agencies and public.

On February 2, 2016, DOE published a notice of proposed rulemaking (NOPR) to amend its existing procedures to provide for this revised, simplified IIP Process for certain electric transmission facilities (81 FR 5383). Publication of the NOPR began a 60-day public comment period that ended on April 4, 2016. On March 22, 2016, DOE conducted a public workshop to discuss the NOPR, which included a presentation describing the proposed rule and allowed for questions about and comments on the proposed rule by workshop participants. Comments on the proposed rulemaking were received from approximately 12 sources, including electric industry groups, other organizations, and individuals. The NOPR, IIP public workshop presentation and transcript, and any comments that DOE received are available on the DOE Web site at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/improving.*

For additional information on the legal authority for this final rule, as well as the Executive Orders and Presidential Memoranda this rule is intended to implement, please see the proposed IIP rule (81 FR 5383; Feb. 2, 2016). The proposed rule also contains information on previous rulemaking and information gathering activities that DOE conducted pursuant to its authority under section 216(h) of the FPA, as well as information on the significant interagency coordination activities that preceded this final rule.

II. Discussion of Final Rule and Responses to Comment

DOE has considered and evaluated the comments received during the public comment period and public workshop. In this section, DOE discusses comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposal adopted in this final rule. Several commenters expressed overall support for DOE's efforts to develop an IIP Process, acknowledging the importance of this effort to improving transmission project planning and siting through early engagement, information sharing, and coordination of federal, tribal, state, and other permitting entities. Comments suggested that implementation of this rule should prove beneficial during pre-application process, as well as provide good information and analysis for informing subsequent NEPA reviews. Specific elements of the proposed rulemaking for which many commenters expressed support include: The voluntary nature of the IIP Process for project proponents; a proposed process that is coordinated by a single agency; the simplified proposal for a two meeting IIP structure; development of IIP Process deliverables maintained by DOE as a part of an IIP Process administrative file; and DOE's required use of information technology, which is intended to reduce costs while increasing the likelihood of remote participation in IIP meetings and discussions by all potentially affected federal agency, tribal, and state and/or local agency representatives.

Commenters did express continued concern that while this final rule is a positive move toward realizing transmission line permitting efficiencies, much more is needed to address challenges in siting infrastructure development and coordination of Federal regulatory authorities and related review processes. Commenters urged DOE to take the lead in developing a systemic, legislative overhaul of the Federal environmental review procedures that lead to lengthy permitting times for important transmission infrastructure that, in their view, necessitated this rulemaking. Commenters also contended that the existing authority afforded to DOE to lead transmission permitting efforts under section 216(h) extends to post-application activities, such as NEPA reviews; that this rule should put a mechanism in place for Federal entities to recover costs associated with participating in a pre-application processes like the IIP Process; and, that this final rule should provide a mechanism for enforcing Federal entity adherence to post-application Federal permitting timelines. In this rule, DOE implements only section 216(h)(4)(C) of the FPA, which requires DOE establish an expeditious pre-application mechanism for siting transmission line projects. As a result, these comments are outside the scope of this final rule, and DOE does not address these comments in this final rulemaking. All other comments are addressed as appropriate in sections II.A. through II.F.

A. General

10 CFR 900.1 states the purpose of the regulations, which is to provide a process for the timely coordination of Federal authorizations for proposed electric transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)), including the development of an early pre-application process in support of this coordination and the selection of a NEPA lead agency. This final rule provides a framework for DOE to coordinate and facilitate early cooperation and exchange of environmental information required to site qualified electric transmission facilities. This early cooperation and information sharing promotes understanding of all permitting requirements and information needs to support agency decision making enabling applicants to prepare more robust applications for submission to relevant Federal, Tribal or State/local permitting agencies. Applications prepared through the IIP Process are expected to better inform post-application regulatory review and consultation processes, such as those under NEPA, the Endangered Species

Act, and the National Historic Preservation Act.

The activities that comprise the IIP Process in this final rule occur prior to an applicant filing a request for authorization with Federal permitting agencies. The IIP Process is intended for a project proponent who has identified potential study corridors and/or potential routes within an established project area for a qualifying project. In DOE's experience, the summary-level project and environmental background information and supporting data, including discussion of the project proponent stakeholder outreach activities, requested as a part of the initiation request as described in § 900.4 of this final rule, is typically under development or available at this stage of project development.

Commenters expressed concerns that the IIP Process would be counterproductive or duplicative of the information developed for and provided to Federal entities in support of an application and subsequent NEPA review. Some commenters pointed to the amount of time needed to prepare the IIP Initiation Meeting Request and asked DOE to explain how this pre-application process supports review activities under NEPA.

Pre-application activities, such as those provided for in this final rule, can be incorporated into a NEPA review process and resultant NEPA document in a variety of ways. For example, Federal entities should incorporate information gained from any pre-application activities into their public notices initiating NEPA reviews and information about the project. In addition, identification of any issues during the pre-application is expected to inform and be shared in scoping meetings and other public meetings that are part of the NEPA process. Information shared through the IIP Process and documented in the Final IIP Resources Report and IIP Meeting Summaries, as described in § 900.4 of this final rule, can be included as part of the background information for developing the proposed action under NEPA, and would also aid in the development of alternatives and be reflected in the alternatives section of the NEPA document, either as part of the alternatives considered but eliminated from further analysis, or as an alternative that is given detailed consideration in the NEPA document.

IIP Process deliverables such as the IIP Final Resources Report or an IIP Meeting Summary, and the information contained therein, as well as the supporting information or data maintained by DOE as a part of the IIP Process administrative file should be incorporated by the NEPA Lead Agency or a cooperating agency under NEPA in a subsequent NEPA document that supports an application requesting Federal authorizations for transmission lines. The IIP Process administrative file as defined in § 900.6 of this final rule would contain IIP Process deliverables that could be referenced directly in NEPA documents post-application. DOE agrees with commenters to the NOPR that the Department should work with CEQ to develop guidance for Federal entities in their implementation of this final rule, specifically focusing on how to use the IIP Process deliverables to inform a post-application environmental review process.

A commenter asked if a prospective applicant, or project proponent, would need to submit application(s) to relevant state(s) responsible for siting transmission lines within their boundaries before submitting its request for initiation of the IIP Process to DOE. Under this final rule, a project proponent may submit an initiation request to DOE before, at the same time as, or after submitting applications for authorizations by relevant states. DOE developed the IIP Process in this final rule to promote flexibility for project proponents with regard to timing of filing all applications for siting authorizations necessary for siting a proposed transmission line project. The IIP Process will notify and provide an opportunity for non-Federal agencies (tribal, state, or local governments) to engage in early planning and coordination of separate non-Federal permitting and environmental reviews with that of the Federal permitting agencies.

DOE also received requests during the public comment period and workshop for clarification about the interaction of this final rule with provisions of the Fixing America's Surface Transportation (FAST) Act (Pub. L. No: 114–94). Passed by Congress in December 2015, the FAST Act contains provisions related to improving environmental review and permitting of infrastructure projects, including but not limited to, transmission infrastructure. For example, Title XLI of the FAST Act creates a new interagency entity—the Federal Permitting Improvement Council—to oversee interagency Federal infrastructure project permitting and review processes, establishes new procedures to standardize interagency consultation and coordination practices, addresses infrastructure project delivery process, and adds tracking of environmental review and permitting milestones. The activities comprising the IIP Process described in this final rule would inform the development of more robust applications for transmission infrastructure projects that could be considered for and benefit from the environmental review and permitting improvement provisions of Title XLI of the FAST Act.[1]

B. Applicability

Section 900.2 of the final rule explains when the provisions of part 900 would apply to the coordination of Federal authorizations. The provisions of part 900, which are consistent with DOE's prior regulations and the 2009 MOU (for additional background on the MOU, please refer to the proposed rule (81 FR 5383, Feb. 2, 2016)), will apply to qualifying projects, and will also apply to Other Projects at the discretion of the Assistant Secretary of DOE's Office of Electricity Delivery and Energy Reliability (OE–1). Both types of projects must be for transmission facilities used for the transmission of electric energy in interstate commerce, but qualifying projects are generally 230 kV or above and cross jurisdictions administered by more than one Federal entity or MOU signatory agency.

Commenters on the NOPR encouraged DOE to apply its coordination of Federal authorizations to transmission line project proposals that would be a part of a "bulk electric system," as defined in FERC Order No. 773,[2] to include all facilities operated at or above 100 kV under the definition of "Other Projects." DOE clarifies that the definition of "Other Projects" in § 900.3 of this final rule would include transmission projects defined by FERC as a part of a bulk electric power system assistance.

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[1] Title XLI of the Fast Act (section 41001(6)(B)(i)) defines the term "covered project" as any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that: (1) Is subject to NEPA; (2) is likely to require a total investment of more than $200,000,000; and, (3) does not qualify for abbreviated authorization or environmental review processes under any applicable law. A covered project may also be one that is subject to NEPA and the size and complexity of which, in the opinion of the Federal Permitting Improvement Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require: (1) Authorization from or environmental review involving more than two Federal agencies; or (2) the preparation of an environmental impact statement under NEPA.

[2] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* Order No. 773, 141 FERC ¶ 61,236 (December 20, 2012).

DOE emphasizes that there will be no coordination role for DOE for Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC and, in Order No. 689,[3] FERC adopted regulations setting forth the procedures it will follow in such circumstances.

This part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, marine national monuments, or facilities constructed by Federal Power Marketing Administrations (PMAs).[4] Section 216(h) does not affect any requirements of U.S. environmental laws, and in the above mentioned cases, does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

C. Definitions

Section 900.3 defines terms for this part. DOE removed the definition of the term "Stakeholder Outreach Plan" from the list of defined terms as it is not a term that is used in this final rule.

D. Integrated Interagency Pre-Application (IIP) Process

Section 900.4 provides the procedures and information requirements of the IIP Process. This section sets forth a framework for implementing the IIP Process, provisions for how DOE would fulfill its section 216(h) Lead Coordinating Agency role as defined in § 900.2 of this final rule, provisions describing expected outcomes of the IIP Initial Meeting and IIP Close-Out Meeting, and provisions describing the nature and purpose of products generated during the IIP Process (*e.g.*, Final IIP Resources Report).

For proponents of qualifying projects or Other Projects, participation in the IIP Process is voluntary. A project proponent initiates the IIP Process by submitting an initiation request as described in § 900.4 of this final rule. A project proponent may elect to request initiation of the IIP Process for a qualifying project or other project as defined in § 900.3. The timing of the initiation request is determined by the project proponent. A project proponent electing to utilize the IIP Process must submit Initial and Close-Out meeting requests to DOE and actively participate in initial and close-out meetings coordinated by DOE to complete the IIP Process. Completion of the IIP Process as proposed in this Final rule is expected to assist the project proponent in determining the likelihood that the project proponent would efficiently obtain permits necessary to construct a proposed project in the competitive, regional transmission planning processes.

The project proponent would be expected, among other things, to provide the project-related and environmental information required as part of the initiation request to DOE. DOE must determine that adequate information has been provided by the project proponent consistent with § 900.4 before DOE will initiate its coordination function under this part.[5]

Information requested as part of the initiation request in this proposed rule retains many of the requirements contained in § 900.5 "Request for coordination" of the existing section 216(h) regulation (73 FR 54456; September 19 2008), and expands on some of those elements based on RRTT agency experience and information received in response to the August 2013 RFI (78 FR 53436). DOE will also consider electronic access to a checklist and an IIP Process timeline, as suggested by commenters. These elements would make process determinations and IIP Process deliverables more clear. DOE may also consider providing publicly-available resources in a central electronic repository, as currently provided for in § 900.6(b) of the existing regulations.[6]

Comments received on the NOPR also expressed concern that the information requested to satisfy the initiation request represents a substantial level of effort and involves preparation time that would be better served by starting NEPA processes (*e.g.*, early scoping) before applications for Federal authorizations are filed with Federal entities. As indicated previously, NEPA environmental review and process requirements are not triggered until an application for Federal authorization is filed and accepted by the recipient permitting Federal entity. The IIP Process would occur prior to submission of an application. Use of the IIP Process is voluntary, and DOE expects that a project proponent requesting DOE coordination assistance has made the calculation that the request, including active participation and preparation of information constituting an IIP initiation request, is in the best interests of the project proponent.

Another commenter was critical of the requirements of the initiation request related to the Early Identification of Project Issues, suggesting that they are duplicative of public scoping under NEPA. The Project Issues summary-level information would be informed by a project proponent's public and stakeholder outreach activities that typically occur during project planning and inform the potential study corridors or potential routes that would be described in the Summary of the qualifying project portion of the IIP Process Initiation request. DOE does not expect that a separate public participation plan would be developed for and specific to the IIP Process nor does the initiation request as described in § 900.4 of this final rule mandate the development of such a plan. Rather, the final rule requires that a project proponent would provide a concise description of how a project proponent coordinates stakeholder interface, communications, and involvement during its own project planning and development efforts to establish potential study corridors or potential routes for a qualifying project.

DOE will notify and request participation by all Federal entities in the IIP Process that have a potential authorization or consultation for a qualifying project after DOE has reviewed and determined that an initiation request meets the informational requirements of § 900.4(a) through (d). All Federal entities notified by DOE as having a potential authorization or consultation required for the siting of a qualifying project will be expected to participate in the Initial Meeting and the Close Out Meeting, unless the notified agency clarifies in writing to DOE within fifteen (15) calendar days of notification that they do not have any involvement or have minimal involvement, along with the supporting rationale used by the notified agency for their non- or minimal involvement.[7] (DOE notes that this notification was required within seven (7) days in the NOPR, but has determined that seven days may not be adequate and so lengthened the time period to 15 days for this final rule.) Several comments on the NOPR suggested that the IIP Process would not be effective in minimizing inefficiencies of multiple agency environmental review and permitting processes if Federal entities and Non-Federal entities cannot be required to participate fully in the IIP Process. This final rule is issued pursuant to Section 216(h)(4)(C) of the FPA, which requires DOE establish an expeditious pre-application mechanism for siting transmission line projects. While this provision authorizes DOE to coordinate pre-application activities among agencies involved in an authorization or permit of a proposed transmission line project, it does not authorize DOE to enforce participation by any Federal entity or non-Federal entity in the IIP Process. Rather, this final rule strongly encourages and establishes a structure by which DOE expects full and timely participation by Federal entities and non-Federal entities through timely notification, and use of electronic collaboration tools, like the use of teleconferencing and electronic collaborative tools, which are intended to support remote, lower-cost participation as described in this final rule.

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[3] Department of Energy Delegation Order No. 00–004–00A, § 1.22, issued May 16, 2006.

[4] DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization requests within the meaning of section 216(h).

[5] The specific information requested as a part of section 216(h) process initiation is listed in the regulatory language in § 900.4(a)–(d). DOE will determine that the initiation request is adequate based on the requested list of summary information (that comprises the "initiation request") in § 900.4(a)–(d).

[6] Electronic tools currently exist that may serve as a resource for the information required as a part of the IIP Process. For example, the Regulatory and Permitting Information Desktop (RAPID) Toolkit is an online tool that streamlines siting and permitting transmission lines in the West. The RAPID Toolkit offers a single location for agencies, developers, and industry stakeholders to work together on electric energy transmission regulatory processes by using a wiki environment to collaborate on regulatory processes, permit guidance, regulations, contacts, and other relevant information. The RAPID Toolkit can be accessed at *http://en.openei.org/wiki/RAPID.*

DOE will schedule IIP meetings no less than thirty (30) calendar days from each other and only after Federal entities are given notice of the need for their participation in the IIP Process. The notification described applies to both Initiation and Close-Out of the IIP Process, in response to the project proponent's request for such meetings.

The list of Federal entities notified by DOE following its review of the initiation request as having a potential authorization or consultation required for the siting of a Qualified Project may be revised as necessary during the IIP Process based on information provided by the project proponent, a Federal entity, and otherwise publicly-available information. DOE will oversee the IIP Process and coordinate the involvement of the Federal entities as described in § 900.4. DOE will provide Federal entities and Non-Federal entities access to all information received from the project proponent as a part of an initiation request determined by DOE to meet the information requirements of this part in § 900.4, which will be coordinated through the use of electronic collaborative tools, specifically the Office of Management and Budget's (OMB's) MAX electronic system (*https://max.omb.gov/maxportal*) throughout an IIP Process for a qualifying project.

In-person attendance at IIP Process meetings by each Federal entity will depend on the availability of resources or the authority to recover costs from project proponents. Currently, certain Federal entities may recover costs only after an application has been submitted, and some Federal entities lack cost recovery authority altogether. Even in instances where cost recovery may be available, each Federal agency will make its own determination regarding its participation and use of resources. Each Federal agency with concerns regarding their level of participation in the IIP Process meetings will provide its rationale to DOE in writing when or if a determination is made that it may not be an expeditious use of staff time and funds to attend all or some meetings. To the extent allowed by law, Federal entities may seek cost recovery from the project proponents during the IIP Process. DOE will provide an opportunity for Federal and Non-Federal entities to participate in IIP meetings by using teleconferencing and webinars.

Coordinating the preparation of the Final IIP Resources Report document prepared by DOE and related administrative file will facilitate more efficient preparation of a single environmental review document that all agencies should strive to utilize to inform their relevant decision making. The Final IIP Resources Report is purposefully designed in terms of format and substance to be consistent with provisions for early application of NEPA and the consideration of applicant proposals in: (1) Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 through 1508); (2) CEQ guidance related to early consultation or engagement of Federal agencies with prospective applicants; and (3) NEPA's Forty Most Asked Questions (46 FR 18026; March 23, 1981, as amended).[8] For example, the format and substance of the Final IIP Resources Report could be similar to an "early corporate environmental assessment" or typical applicant generated environmental study. CEQ explains that provisions to promote the early application of NEPA, including by encouraging private parties to initiate environmental studies early and encouraging pre-application consultation between private parties and federal agencies "are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay."[9] Comments on the NOPR highlight the importance of the Final IIP Resources Report and its use by a NEPA Lead Agency in informing the post-application environmental review process (*e.g.,* informing scoping) and resultant NEPA document (*e.g.,* alternatives development or incorporation by reference). DOE acknowledges this comment, and notes that, as discussed previously in this preamble, DOE will coordinate its guidance efforts with CEQ to best integrate the information contained in the Final IIP Resources Report into post-application environmental review(s).

The Final IIP Resources Report will be included by DOE, along with all other support information, datasets, maps, figures, etc. collected as part of the IIP Process in an IIP Process administrative file that would be provided to the NEPA Lead Agency to inform their environmental reviews once an application is filed. This information can, and should, also be used by other agencies on related decision making. DOE will maintain the IIP Process administrative file for the duration of the IIP Process and after the IIP Close out Meeting has been convened.

E. Selection of NEPA Lead Agency

Section 900.5 provides a mechanism for the identification and selection of a potential NEPA Lead Agency responsible for meeting Federal environmental review requirements[10] for permitting interstate transmission lines across multiple Federal jurisdictions once applications are filed with permitting agencies. This section incorporates the terms and mechanisms provided for identification and determination of NEPA Lead Agency for transmission facilities proposed for siting on majority Federal lands as set forth in the 2009 MOU and in accordance with CEQ's NEPA regulations. DOE provided clarifying changes to the § 900.5 provisions of this final rule, including allowing for agencies to notify DOE of the potential lead agency within 30 calendar days. DOE has determined that more time was needed for agencies to consider this designation and notify DOE of the determination.

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[7] Provided, however, that a Federal entity whose permitting authority for the construction or modification of electric transmission facilities is limited to those facilities for which an application is filed under section 216(b) of the Federal Power Act may participate at its sole discretion.

[8] CEQ, NEPA's Forty Most Asked Questions (46 FR 18026; March 23, 1981, as amended).

[9] *Id.*

[10] Each participating Federal entity is responsible for meeting its own agency-specific requirements.

F. IIP Process Administrative File

Section 900.6 defines the contents of a consolidated IIP Process administrative file intended to document IIP Process-related information. This new section replaces § 900.6 of the existing Section 216(h) regulations (73 FR 54456). This section also describes the process by which this file will be maintained by DOE as Lead section 216(h) Agency in coordination with the Federal entities for the duration of the IIP Process. DOE will coordinate its guidance efforts with CEQ to appropriately integrate the information contained in the IIP Process Administrative File into post-application environmental review(s) and related agency decision records.

III. Regulatory Review

A. Executive Orders 12866 and 13563

This regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE concludes that this final rule is consistent with these principles. Specifically, this final rule sets forth voluntary procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities. Therefore, any additional costs associated with the implementation of the rule will primarily impact Federal implementing agencies. However, as described in section III.C., because the rule seeks to streamline the IIP process, additional costs to Federal Agencies may actually be minimized or costs may be reduced. As discussed below, DOE will attempt to characterize the effect of this regulation on Federal Agencies as part of its retrospective review efforts. Additionally actions taken by this rule to coordinate information and agency communication before applications for Federal authorizations are submitted to Federal agencies for review and consideration may help reduce application review and decision-making timelines thereby potentially benefiting applicants as well as the Federal government. Because use of the IIP Process is voluntary, DOE further expects that the project proponent requesting assistance has made the calculation that the request was in the best interests of the project proponent. The request would also help transmission developers determine the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes. As part of its semi-annual retrospective review plan or other performance tracking efforts, DOE will (1) peridocially review the efficacy of the IIP process, including an analysis of how the revised process under this rulemaking has: (a) Improved times to permit approval; (b) streamlined overall process performance, and (c) impacted costs to the Federal government; (2) share the results with the public; and (3) seek and respond to comments from the public, including applicants and other federal agencies on how the process may be improved.

B. National Environmental Policy Act

DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rulemaking is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to Rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule sets forth simplified or revised procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts Federal agencies and not small entities. In those cases where a project proponent requests DOE assistance for a project that is not a qualifying project, DOE expects that the provisions of this final rule, if adopted, would not affect the substantive interests of such project proponents, including any project proponents that are small entities. DOE expects actions taken under the provisions to coordinate information and agency communication before applications for Federal authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Because use of the IIP Process set forth in this final rule is voluntary, DOE further expects that the project proponent requesting assistance has made the calculation that the request was in the best interests of the project proponent. The request would also help facilitate transmission developers with determining the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes. On the basis of the foregoing, DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The rule contains information collection requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* This requirement has been submitted to OMB for approval. Public reporting burden for providing information during the pre-application process is estimated to average twenty-five (25) hours per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The pre-application burden estimate also includes time necessary to share and discuss information during pre-application meetings.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on tribal, state, and local governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon tribal, state, or local governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on tribal, state, and local governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to tribal, state, or local governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of tribal, state, and local governments. 2 U.S.C. 1534.

This final rule would revise procedures for an Integrated Interagency Pre-application process by which transmission developers, Federal, state, local agencies and tribes may coordinate early either in person or via teleconference/web conference and share information electronically. DOE has determined that the final rule would not result in the expenditure by tribal, state, and local governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any final rule that may affect family well-being. The final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt state law and would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action, which is intended to improve the pre-application procedures for certain transmission projects and therefore result in the more efficient processing of applications, would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this final rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 16, 2016.

Patricia Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

■ For the reasons stated in the preamble, DOE revises part 900 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.

900.1 Purpose.
900.2 Applicability.
900.3 Definitions.
900.4 Integrated Interagency Pre-application (IIP) process.
900.5 Selection of NEPA lead agency.
900.6 IIP Process administrative file.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of information needed for Federal authorizations for proposed electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). This part seeks to ensure electric transmission projects are consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats and historic properties. This part provides a framework called the Integrated Interagency Pre-Application (IIP) Process by which the U.S. Department of Energy (DOE) cooperates with applicable Federal and Non-Federal entities for the purpose of early coordination and information sharing for permitting and environmental reviews required under Federal law to site qualified electric transmission facilities prior to submission of required Federal request(s). The IIP Process provides for timely and focused pre-application meetings with key Federal and Non-Federal entities, as well as for early identification of potential siting constraints or opportunities, and seeks to promote thorough and consistent stakeholder outreach or engagement by a project proponent during its transmission line planning efforts. The IIP Process occurs before any application or request for authorization is submitted to Federal entities. This part improves the siting process by facilitating the early submission, compilation, and documentation of information needed for subsequent coordinated environmental review of a qualifying project or approved other project by Federal entities under the National Environmental Policy Act (NEPA) following the submission of an application or request for authorization. This part also provides an opportunity for Non-Federal entities to coordinate their non-Federal permitting and environmental reviews with the reviews of the Federal entities.

§ 900.2 Applicability.

(a) The regulations under this part apply to qualifying projects. At the discretion of the Assistant Secretary (OE–1) the provisions of part 900 may also apply to Other Projects.

(b) *Other Projects.* (1) Persons seeking DOE assistance in the Federal authorization process for Other Projects must file a request for coordination with the OE–1. The request must contain:

(i) The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; citations to the state laws under which the requester is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(ii) A concise general description of the proposed other project sufficient to explain its scope and purpose;

(iii) A list of all potential Federal entities involved in the proposed Other Project; and

(iv) A list of anticipated Non-Federal entities involved in the proposed Other Project, including any agency serial or docket numbers for pending applications.

(2) Within thirty (30) calendar days of receiving this request, the OE–1, in consultation with the affected Federal entities with jurisdiction, will determine if the other project should be treated as a qualifying project under this part and will notify the project proponent of one of the following:

(i) If accepted for processing under this rule, the project will be treated as a qualifying project and the project proponent must submit an initiation request as set forth under § 900.5; or

(ii) If not accepted for processing under this rule, the project proponent must follow the standard procedures of

Federal entities that will have jurisdiction over the project.

(c) This part does not apply to Federal authorizations for electric transmission facilities wholly located within the Electric Reliability Council of Texas interconnection.

(d) This part does not apply to electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor where a project proponent seeks a construction or modification permit from the Federal Energy Regulatory Commission (FERC) under section 216(b) of the Federal Power Act (16 U.S.C. 824p(b)).

(e) This part does not affect any requirements of Federal law. Participation or non-participation in the IIP Process does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities. This part shall not alter or diminish any responsibilities of the Federal entities to consult under applicable law.

(f) This part complements, and does not supplant, the Federal entities' pre-application procedures for a Federal authorization. Participation in the IIP Process does not guarantee issuance of any required Federal authorization for a proposed qualifying project or selection of the project proponent's proposed study corridors and proposed routes as a range of reasonable alternatives or the preferred alternative for NEPA purposes.

(g) DOE, in exercising its responsibilities under this part, will communicate regularly with the FERC, electric reliability organizations and electric transmission organizations approved by FERC, other Federal entities, and project proponents. DOE will use information technologies to provide opportunities for Federal entities to participate remotely.

(h) DOE, in exercising its responsibilities under this part, will to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any Non-Federal entities. DOE will use information technologies to provide opportunities for Non-Federal entities to participate remotely.

§ 900.3 Definitions.

As used in this part:

Affected landowner means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property:

(1) Is located within either 0.25 miles of a proposed study corridor or route of a qualifying project or at a minimum distance specified by state law, whichever is greater; or

(2) Contains a residence within 3000 feet of a proposed construction work area for a qualifying project.

DOE means the United States Department of Energy.

Early identification of project issues refers to an early and open stakeholder participation process carried out by a project proponent as a part of its project development activities to identify potential environmental issues Federal and Non-Federal entities' may consider for further study, issues of concern to the affected public and stakeholders, and potential project alternatives.

Federal authorization means any authorization required under Federal law to site an electric transmission facility, including permits, rights-of-way, special use authorizations, certifications, opinions, or other approvals. This term includes those authorizations that may involve determinations under Federal law by either Federal or Non-Federal entities.

Federal entity means any Federal agency with jurisdictional interests that may have an effect on a proposed qualifying project, that is responsible for issuing a Federal authorization for the proposed qualifying project or attendant facilities, has relevant expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed qualifying project or its attendant facilities, or provides funding for the proposed qualifying project or its attendant facilities. Federal entities include those with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as the Department of Defense for an examination of military test, training or operational impacts.

FPA means the Federal Power Act (16 U.S.C. 791 through 828c).

IIP process administrative file means the information assembled and maintained by DOE as the Lead section 216(h) Agency. The IIP Process Administrative File will include the IIP Initiation Request, which includes a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information and Data (provided in electronic format), and a Summary of Early Identification of Project Issues. The IIP Process Administrative File will also include IIP Meeting Summaries, an IIP Resources Report, and other documents, including but not limited to maps, publicly-available data, and other supporting documentation submitted by the project proponent as part of the IIP Process that inform the Federal entities.

IIP resources report means the resource summary information provided by the project proponent as a part of the IIP Process that meets the content requirements pursuant to § 900.4 of this part. The IIP Resource Report contains the environmental information used by a project proponent to plan a qualifying project.

Indian tribe has the same meaning as provided for in 25 U.S.C. 450b(e).

Lead 216(h) agency means the Department of Energy, which section 216(h) of the FPA (16 U.S.C. 824p(h)) makes responsible for timely coordination of Federal authorization requests for proposed electric transmission facilities.

MOU principals means the heads of each of the MOU signatory agencies.

MOU signatory agency means a signatory of the Interagency MOU executed on October 23, 2009, entitled, "Memorandum of Understanding among the United States (U.S.) Department of Agriculture (USDA), the Department of Commerce, Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), the Federal Energy Regulatory Commission (FERC), the Advisory Council on Historic Preservation (ACHP), and Department of the Interior (DOI), regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Lands."

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

NEPA lead agency means the Federal agency or agencies preparing or having primary responsibility for preparing an environmental impact statement or environmental assessment as defined in 40 CFR 1508.16 and in accordance with 40 CFR 1501.5(c).

Non-federal entity means an Indian Tribe, multistate governmental entity, or state and local government agency with relevant expertise and/or jurisdiction within the project area, that is responsible for conducting permitting and environmental reviews of the proposed qualifying project or its attendant facilities, that has special expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed qualifying project or its attendant facilities, or provides funding for the proposed qualifying project or its attendant facilities. Non-Federal entities may include those with either permitting or non-permitting authority, *e.g.*, entities such as State Historic

Preservation Offices, with whom consultation must be completed in accordance with section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, before a project can commence.

OE–1 means the Assistant Secretary for DOE's Office of Electricity Delivery and Energy Reliability.

Other projects mean electric transmission facilities that are not qualifying projects. Other Projects may include facilities for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale that do not meet the 230 kV or above qualification, or are not otherwise identified as regionally or nationally significant with attendant facilities, in which all or part of a proposed transmission line—

(1) Crosses jurisdictions administered by more than one Federal entity; or

(2) Crosses jurisdictions administered by a Federal entity and is considered for Federal financial assistance from a Federal entity.

Project area means the geographic area considered when the project proponent develops study corridors and then potential routes for environmental review and potential project siting as a part of the project proponent's planning process for a qualifying project. It is an area located between the two end points of the project (*e.g.,* substations), including their immediate surroundings within at least one-mile of that area, as well as any proposed intermediate substations. The size of the project area should be sufficient to allow for the evaluation of various potential alternative routes with differing environmental, engineering, and regulatory constraints. The project area does not necessarily coincide with "permit area," "area of potential effect," "action area," or other defined terms of art that are specific to types of regulatory review.

Project proponent means a person or entity who initiates the IIP Process in anticipation of seeking Federal authorizations for a qualifying project or Other Project.

Qualifying project means a non-marine high voltage electric transmission line (230 kV or above) and its attendant facilities, or other regionally or nationally significant non-marine electric transmission line and its attendant facilities, in which:

(1) All or part of the proposed electric transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and

(2) All or part of the proposed electric transmission line crosses jurisdictions administered by more than one Federal entity or crosses jurisdictions administered by a Federal entity and is considered for Federal financial assistance from a Federal entity. qualifying projects do not include those for which a project proponent seeks a construction or modification permit from the FERC for electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor under section 216(b) of the FPA (16 U.S.C. 824p(b)).

Regional mitigation approach means an approach that applies the mitigation hierarchy (first seeking to avoid, then minimize impacts, then, when necessary, compensate for residual impacts) when developing mitigation measures for impacts to resources from qualifying projects at scales relevant to the resource, however narrow or broad, necessary to sustain, or otherwise achieve established goals for those resources. The approach identifies the needs and baseline conditions of targeted resources, potential impacts from the qualifying projects, cumulative impacts of past and likely projected disturbance to those resources, and future disturbance trends. The approach then uses such information to identify priorities for avoidance, minimization, and compensatory mitigation measures across that relevant area to provide the maximum benefit to the impacted resources.

Regional mitigation strategies or plans mean documents developed through or external to the NEPA process that apply a Regional Mitigation Approach to identify appropriate mitigation measures in advance of potential impacts to resources from qualifying projects.

Route means a linear area within which a qualifying project could be sited. It should be wide enough to allow minor adjustments in the alignment of the qualifying project so as to avoid sensitive features or to accommodate potential engineering constraints but narrow enough to allow detailed study.

Stakeholder means any Non-Federal entity, any non-governmental organization, Affected Landowner, or other person potentially affected by a proposed qualifying project.

Study corridor means a contiguous area (but not to exceed one-mile) in width within the project area where alternative routes may be considered for further study.

§ 900.4 Integrated Interagency Pre-application (IIP) process.

(a) The IIP Process is intended for a project proponent who has identified potential study corridors and/or potential routes within an established project area and the proposed locations of any intermediate substations for a qualifying project. The IIP Process is also intended to accommodate qualifying projects that have been selected in a regional electric transmission plan for purposes of cost allocation or a similar process where an electric transmission plan has been identified and the permitting and siting phase must commence. While the IIP Process is optional, the early coordination provided by DOE between Federal entities, Non-Federal entities, and the project proponent ensures that the project proponent fully understands application and permitting requirements, including data potentially necessary to satisfy application requirements for all permitting entities. The two-meeting structure of the IIP process also allows for early interaction between the project proponents, Federal entities, and Non-Federal entities in order to enhance early understanding by those having an authorization or consultation related to the qualifying project. The IIP process is expected to provide Federal entities and Non-Federal entities with a clear description of a qualifying project, the project proponent's siting process, and the environmental and community setting being considered by the project proponent for siting the transmission line, as well as facilitate the Early Identification of Project Issues.

(b) A project proponent electing to utilize the IIP Process must submit an initiation request to DOE to start the IIP Process. The timing of the submission of the initiation request for IIP Process is determined by the project proponent. The initiation request must include, based on best available information, a Summary of qualifying project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Studies (provided in electronic format), and a Summary of Early Identification of Project Issues. The initiation request must adhere to the page limits established by this part.

(c) Summary of the qualifying project is limited to a maximum length of ten (10) pages, single-spaced and must include:

(1) A statement that the project proponent requests to use the IIP Process;

(2) Primary contact information for the project proponent, including a primary email address;

(3) The legal information for the project proponent: Legal name; principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the state

laws under which the requester is organized or authorized; and if the project proponent resides or has its principal office outside the United States, documentation related to designation by irrevocable power of attorney of an agent residing within the United States;

(4) A description of the project proponent's financial and technical capability to construct, operate, maintain, and decommission the qualifying project;

(5) A statement of the project proponent's interests and objectives;

(6) To the extent available, regional electric transmission planning documents, including status of regional reliability studies, regional congestion or other related studies where applicable, and interconnection requests;

(7) A brief description of the evaluation criteria and methods used by the project proponent to identify and develop the potential study corridors or potential Routes for the proposed qualifying project;

(8) A brief description of the proposed qualifying project, including endpoints, voltage, ownership, justification for the line, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the qualifying project;

(9) Project proponent's proposed schedule, including timeframe for filing necessary Federal and state applications, construction start date, and planned in-service date if the qualifying project receives needed Federal authorizations and approvals by Non-Federal entities; and

(10) A list of potentially affected Federal and Non-Federal entities.

(d) *Affected Environmental Resources and Impacts Summary.* The Affected Environmental Resources and Impacts Summary is limited to a maximum length of twenty (20), single-spaced pages, not including associated maps, and must include concise descriptions, based on existing, relevant, and reasonably-available information, of the known existing environment, and major site conditions in project area, including:

(1) An overview of topographical and resource features that are relevant to the siting of electric transmission lines present;

(2) Summary of known land uses, including Federal lands, Tribal lands, and state public lands of various types (*e.g.,* parks and monuments), associated land ownership, where appropriate, and any land use restrictions;

(3) Summary of known or potential adverse effects to cultural and historic resources;

(4) Summary of known or potential conflicts with or adverse impacts on military activities;

(5) Summary of known or potential impacts on the U.S. aviation system, including FAA restricted airspace;

(6) Summary of known or potential impacts on the U.S. marine transportation system, including impacts on waterways under jurisdiction of the U.S. Coast Guard;

(7) Summary of known information about Federal- and state-protected avian, aquatic, and terrestrial species, and critical habitat or otherwise protected habitat, that may be present, as well as other biological resources information that is necessary for an environmental review;

(8) Summary of the aquatic habitats (to include estuarine environments, and water bodies, including wetlands, as well as any known river crossings and potential constraints caused by impacts to navigable waters of the United States considered for the qualifying project);

(9) Summary of known information about the presence of low-income communities and minority populations that could be affected by the qualifying project;

(10) Identification of existing or proposed qualifying project facilities or operations in the project area;

(11) Summary of the proposed use of previously-disturbed lands, existing, agency-designated corridors, including but not limited to corridors designated under section 503 of the Federal Land Policy and Management Act and section 368 of the Energy Policy Act of 2005, transportation rights-of-way, and the feasibility for co-location of the qualifying project with existing facilities or location in existing corridors and transportation rights-of-way; and

(12) Summary of potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans, and considered by the project proponent to reduce the potential impacts of the proposed qualifying project to resources warranting or requiring mitigation.

(e) *Maps, Geospatial Information, and Studies.* Maps, Geopspatial Information and Studies in support of the information provided in the summary descriptions for the known existing environmental, cultural, and historic resources in the project area under paragraph (d) in this section must be included, and do not contribute to the overall page length of the IIP initiation request. Project proponents must provide maps as electronic data files that may be readily accessed by Federal entities and Non-Federal entities, including:

(1) A map of the project area showing the locations of potential study corridors or potential routes;

(2) Detailed maps that accurately show information supporting summaries of the known existing environmental resources within the potential study corridors or potential routes;

(3) Electronic access to existing data or studies relevant to the summary information provided as part of paragraphs (a) through (d) of this section; and

(4) Citations identifying sources, data, and analyses used to develop the IIP Process initiation request materials.

(f) *Summary of Early Identification of Project Issues.* The Summary of Early Identification of Project Issues must not exceed ten (10), single-spaced pages in length and is intended to provide a summary of stakeholder outreach or interactions conducted for the qualifying project prior to submission of the initiation request and to inform the development of issues and project alternatives for study in an environmental review document. The Summary of Early Identification of Project Issues must also:

(1) Discuss the specific tools and actions used by the project proponent to facilitate stakeholder communications and public information, including an existing, current project proponent Web site for the proposed qualifying project, where available, and a readily-accessible, easily-identifiable, single point of contact for the project proponent;

(2) Identify how and when meetings on the location of potential study corridors or potential routes have been and would be publicized prior to the submission of applications for Federal authorization, as well as where and when those meetings were held and how many more meetings may be planned during the IIP Process;

(3) Identify known stakeholders and how stakeholders are identified;

(4) Briefly explain how the project proponent responds to requests for information from stakeholders, as well as records stakeholder requests, information received, and project proponent responses to stakeholders;

(5) Provide the type of location (for example, libraries, community reading rooms, or city halls) in each county potentially affected by the proposed

qualifying project, where the project proponent has provided publicly-available copies of documents and materials related to the proposed qualifying project;

(6) Describe the evaluation criteria being used by the project proponent to identify and develop the potential study corridors or potential routes and that are presented by the project proponent to stakeholders during its project planning outreach efforts prior to submission of applications for Federal authorizations or non-Federal permits or authorizations;

(7) Provide information collected as a result of the project proponent's stakeholder outreach efforts; and

(8) Include a summary of issues identified, differing project alternative Corridors or routes, and revisions to routes developed as a result of issues identified by stakeholders during the project proponent's stakeholder outreach efforts for the qualifying project.

(g) Within fifteen (15) calendar days of receiving the initiation request, DOE shall notify by email all Federal entities and Non-Federal entities with an authorization potentially necessary to site the qualifying project that:

(1) Based on its initial review of information submitted by the project proponent in response to requirements in paragraphs (a) through (f) of this section, DOE has identified the contacted Federal entities or Non-Federal entities as potentially having an authorization or consultation responsibility or other relevant expertise related to the qualifying project;

(2) Federal and Non-Federal entities notified by DOE should participate in the IIP Process for the qualifying project with DOE's rationale for that determination provided; and

(3) Federal and Non-Federal entities notified by DOE will provide DOE with a name and information for a point of contact, and any initial questions or concerns, including supporting rationale, about their level of participation in the IIP Process based on DOE's justification in writing to DOE within fifteen (15) calendar days of receiving DOE's notification.

(h) Within thirty (30) calendar days of receiving the initiation request, DOE shall notify the project proponent that:

(1) The initiation request meets the requirements in paragraphs (a) through (f) of this section, including whether the project constitutes a qualifying project; or

(2) The initiation request does not meet the requirements in paragraphs (a) through (f) in this section. DOE will provide the reasons for that finding and a description of how the project proponent may, if applicable, address any deficiencies through supplementation of the information contained in the initiation request so that DOE may re-consider its determination.

(i) DOE shall provide Federal and Non-Federal entities with access to an electronic copy of the initiation request and associated maps, geospatial data, and studies that meet the requirements in paragraphs (a) through (f) of this section, at the same time that DOE provides notice to the project proponent.

(j) *IIP Initial Meeting.* DOE, in consultation with the identified Federal entities, shall convene the IIP Initial Meeting with the project proponent and all Federal entities and Non-Federal entities notified by DOE as having an authorization or consultation related to the qualifying project as soon as practicable and no later than forty-five (45) calendar days after notifying the project proponent and Federal and Non-Federal entities that the initiation request meets the requirements in paragraphs (a) through (f) of this section. The Initial Meeting shall be convened in the area or region where the proposed qualifying project is located. Federal and Non-Federal entities shall have at least thirty (30) calendar days to review the information provided by the project proponent as part of the initiation request prior to the meeting. Federal entities identified by DOE as having a Federal authorization related to the qualifying project are expected to participate in the Initial Meeting. DOE also shall invite Non-Federal entities identified by DOE as having an authorization or consultation related to the qualifying project to participate in the Initial Meeting. During the Initial Meeting:

(1) DOE and the Federal entities shall discuss the IIP Process and any cost recovery requirements, where applicable, with the project proponent;

(2) The project proponent shall describe the proposed qualifying project and the contents of its initiation request; and

(3) The Federal entities shall, to the extent possible and based on agency expertise and experience, review the information provided by the project proponent, and publicly-available information, and preliminarily identify the following and other reasonable criteria for adding, deleting, or modifying preliminary Routes from further consideration within the identified study corridors, including:

(i) Potential environmental, visual, historic, cultural, economic, social, or health effects or harm based on the potential project or proposed siting, and anticipated constraints;

(ii) Potential cultural resources and historic properties of concern;

(iii) Areas under special protection by Federal statute, or other Federal entity or Non-Federal entity decision that could potentially increase the time needed for project evaluation and potentially foreclose approval of siting a transmission line route through such areas. Such areas may include, but are not limited to, properties or sites which may be of traditional or cultural importance to Indian Tribe(s), National Scenic and Historic Trails, National Landscape Conservation system units managed by the Bureau of Land Management (BLM), National Wildlife Refuges, units of the National Park System, national marine sanctuaries, or marine national monuments;

(iv) Opportunities to site routes through designated corridors, previously disturbed lands, and lands with existing infrastructure as a means of potentially reducing impacts and known conflicts as well as the time needed for affected Federal land managers to evaluate an application for a Federal authorization if the route is sited through such areas (*e.g.,* co-location with existing infrastructure or location on previously disturbed lands or in energy corridors designated by the DOI or USDA under Section 503 of the Federal Land Policy and Management Act or Section 368 of the Energy Policy Act of 2005, an existing right-of-way, or a utility corridor identified in a land management plan);

(A) Potential constraints caused by impacts on military test, training, and operational missions, including impacts on installations, ranges, and airspace;

(B) Potential constraints caused by impacts on the United States' aviation system;

(C) Potential constraints caused by impacts to navigable waters of the United States;

(D) Potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed qualifying project to resources requiring mitigation; and

(E) Based on available information provided by the project proponent, biological (including threatened, endangered, or otherwise protected avian, aquatic, and terrestrial species and aquatic habitats), visual, cultural, historic, and other surveys and studies that may be required for preliminary proposed routes.

(v) Such information and feedback to the project proponent does not constitute a commitment by Federal entities to approve or deny any Federal authorization request. Moreover, no agency will determine that the project proponent's proposed preliminary routes presented or discussed during the IIP Process constitute a range of reasonable alternatives for NEPA purposes or that the environmental information provided during the IIP Process would satisfy the entirety of information needs for purposes of compliance with NEPA or other applicable laws and regulations. The IIP Process does not limit agency discretion regarding NEPA review. Participating Non-Federal entities are encouraged to identify risks and benefits of siting the proposed qualifying project within the preliminary proposed routes.

(vi) DOE shall record key issues, information gaps, and data needs identified by Federal and Non-Federal entities during the Initial Meeting, and shall convey a summary of the meeting discussions, key issues, and information gaps and requests to the project proponent, all Federal entities, and any Non-Federal entities that participate in the IIP Process in a draft Initial Meeting Summary within fifteen (15) calendar days after the meeting. Participating Federal entities and Non-Federal entities, and the project proponent will then have fifteen (15) calendar days following its receipt of the IIP Process Meeting Summary to review the IIP Process Meeting Summary and provide corrections to DOE for resolution in a final Initial Meeting Summary, as appropriate. Thirty (30) calendar days following the close of the 15-day review period, DOE will incorporate the final Initial Meeting Summary into the IIP Process Administrative File for the qualifying project, and, at the same time, provide all Federal and Non-Federal entities and the project proponent an electronic copy of a final IIP Initial Meeting Summary.

(k) *IIP Close-Out Meeting Request.* A project proponent electing to utilize the IIP Process pursuant to this section must submit a Close-Out Meeting Request to DOE to complete the IIP Process. The timing of the submission of the Close-Out Meeting Request for the IIP Process is determined by the project proponent but may only be submitted no less than forty-five (45) calendar days following the Initial Meeting. The Close-Out Meeting Request shall include:

(1) A statement that the project proponent is requesting the Close-Out Meeting for the IIP Process;

(2) A summary table of changes made to the qualifying project during the IIP Process, including potential environmental and community benefits from improved siting or design;

(3) Maps of updates to potential proposed routes within study corridors, including the line, substations and other infrastructure, which include at least as much detail as required for the Initial Meeting described above and as modified in response to early stakeholder input and outreach and agency feedback documented as a part of the IIP Initial Meeting Summary;

(4) An updated summary of all project-specific biological (including threatened, endangered or otherwise protected avian, aquatic, and terrestrial species, and aquatic habitats), visual, cultural, historic or other surveys sponsored by the project proponent;

(5) If known, a schedule for completing upcoming field resource surveys;

(6) An updated summary of all known or potential adverse impacts to natural resources;

(7) An updated summary of any known or potential adverse effects to cultural and historic resources;

(8) A conceptual plan for potential implementation and monitoring of mitigation measures, including avoidance, minimization, and conservation measures, such as compensatory mitigation (offsite and onsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed qualifying project to resources warranting or requiring mitigation;

(9) An estimated time of filing its requests for Federal authorizations for the proposed qualifying project; and

(10) An estimated time of filing its requests for all other authorizations and consultations with Non-Federal entities.

(l) *Close-Out Meeting.* The IIP Process Close-Out Meeting shall result in a description by Federal entities of the remaining issues of concern, identified information gaps or data needs, and potential issues or conflicts that could impact the time it will take affected Federal entities to process applications for Federal authorizations for the proposed qualifying project. The Non-Federal entities shall also be encouraged to provide a description of remaining issues of concern, information needs, and potential issues or conflicts. The IIP Process Close-Out Meeting will also result in the identification of a potential NEPA Lead Agency pursuant to § 900.6 described.

(1) Within fifteen (15) calendar days of receiving the Close-Out Meeting Request, DOE shall notify by email the appropriate POCs of all Federal entities and Non-Federal entities with a known or potential authorization necessary to site the qualifying project.

(2) Within thirty (30) calendar days of receiving a Close-Out Meeting Request, DOE shall determine whether the Close-Out Meeting Request meets the requirements in paragraph (k) of this section and inform the project proponent of its acceptance, and provide Federal entities and Non-Federal entities with Close-Out Meeting Request materials, including map, geospatial data, and surveys in electronic format, via electronic means.

(3) Within sixty (60) calendar days of making a determination that the Close-Out Meeting Request meets the requirements of this section, DOE shall convene the Close-Out Meeting in the same region or location as the Initial Meeting with the project proponent and all Federal entities. All Non-Federal entities participating in the IIP Process shall also be invited to attend. During the Close-Out Meeting:

(i) The project proponent's updates to the siting process to date shall be discussed, including stakeholder outreach activities, resultant stakeholder input, and project proponent response to stakeholder input;

(ii) Based on information provided by the project proponent to date, the Federal entities shall discuss key issues of concern and potential mitigation measures identified for the proposed qualifying project;

(iii) Led by DOE, all Federal entities shall discuss statutory and regulatory standards that must be met to make decisions for Federal authorizations required for the proposed qualifying project;

(iv) Led by DOE, all Federal entities shall describe the process and estimated time to complete for required Federal authorizations and, where possible, the anticipated cost (*e.g.,* processing and monitoring fees and land use fees);

(v) Led by DOE, all affected Federal entities shall describe their expectations for a complete application for a Federal authorization for the proposed qualifying project;

(vi) After the close out meeting, DOE shall prepare a Final IIP Resources Report for inclusion in the IIP Process Administrative File. The Final IIP Resources Report provides a description of the proposed qualifying project, including stakeholder outreach activities and feedback, summary information on environmental resources, and potential impacts (with electronic access to associated maps, geospatial data and/or survey data), potential issues, and identification of constraints by Federal entities and Non-Federal entities for the proposed qualifying project;

(vii) DOE shall recommend that participating Federal entities use the Final IIP Resources Report to inform the NEPA process for the proposed qualifying project. For example, Federal entities could use the Final IIP Resources Report during scoping for an EIS and identifying potential routes, to explain why certain alternatives were eliminated from further consideration, and to preliminarily identify impacts, potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans and considered by the project proponent to reduce the potential impacts of the proposed qualifying project to resources requiring mitigation; and

(viii) All participating Federal and Non-Federal entities shall identify a preliminary schedule for authorizations for the proposed qualifying project contingent upon timely filing of applications and related materials by the project proponent.

§ 900.5 Selection of the NEPA lead agency.

DOE, in consultation with the Federal entities, shall coordinate the selection of a potential NEPA Lead Agency responsible for preparing an environmental review document under NEPA for proposed qualifying projects. Determination and responsibilities of the NEPA Lead Agency for preparing the EIS shall be in compliance with applicable law, including the National Environmental Policy Act of 1969 and CEQ implementing regulations at 40 CFR part 1500, and each agency's respective NEPA implementing regulations and procedures. However:

(a) For proposed qualifying projects that cross lands administered by both DOI and USDA, DOI and USDA shall consult and jointly determine within thirty (30) calendar days of receiving the initiation request information from DOE which Department has a greater land management interest in the proposed qualifying project and which Department should therefore assume the role of NEPA Lead Agency.

(b) DOI and USDA shall notify DOE of their determination regarding the NEPA Lead Agency in writing within thirty (30) calendar days of making the determination.

(c) Unless DOE notifies DOI and USDA in writing of its objection to that determination within ten (10) calendar days of the DOI/USDA notification, the determination shall be deemed accepted and final. In deciding whether to object to the determination, DOE shall consider the CEQ regulations pertaining to selection of the Lead Agency, including 40 CFR 1501.5(c).

(d) For proposed qualifying projects that do not cross lands administered by both DOI and USDA, DOE and the Federal entities that will likely constitute the cooperating agencies for an environmental review document under NEPA, shall consult and jointly recommend a potential NEPA Lead Agency within 45 calendar days of receiving an IIP Process Close-Out Meeting Request. If DOE and the Federal entities are unable to agree on a recommendation for a NEPA Lead Agency, the Federal entities shall request CEQ to make a final determination by the Close-Out Meeting. No determination of a Federal entity as the potential NEPA Lead Agency under this part shall be made absent that Federal entity's consent.

§ 900.6 IIP Process administrative file.

(a) When communicating with the project proponent during the IIP Process, Federal entities are expected to include DOE in all communications related to the IIP Process for the project proponent's proposed qualifying project.

(b) DOE shall maintain all information, including documents and communications, it disseminates or receives from the project proponent, Federal entities, and Non-Federal entities during the IIP Process in an IIP Process Administrative File for future use in reviewing any applications for required Federal authorizations for the proposed qualifying project. DOE will process any requests for information from the public in accordance with Freedom of Information Act requirements. DOE will share the IIP Process Administrative File with the selected or potential NEPA Lead Agency.

(c) DOE shall document the list of issues identified during the IIP Process for a proposed qualifying project and any updates to information provided as part of the Close-Out Meeting discussion in a Final IIP Resources Report for the IIP Process Administrative File.

(d) Each Federal entity is strongly encouraged to maintain the documents and communications developed in the IIP Process subject to each Federal entity's administrative record policies and, as appropriate and applicable, those documents and communications should become part of that Federal entity's administrative record for granting or denying a Federal authorization for each qualifying project.

[FR Doc. 2016–23285 Filed 9–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9114; Directorate Identifier 2016–NM–146–AD; Amendment 39–18671; AD 2016–20–05]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. This AD requires an inspection to identify the type of fasteners installed on the upper longerons and upper fittings of the engine mounting structure (EMS), an inspection for discrepancies of certain fasteners, and corrective action if necessary. This AD was prompted by the discovery of blind fasteners installed in EMS upper fittings that do not meet the type design. We are issuing this AD to detect and correct discrepancies of blind fasteners that could cause crack development and vibration in the engine mount structure, which could lead to failure of the affected engine-mount-to-airplane structural connection and resultant detachment of an engine from the airplane when both sides of a nacelle are affected.

DATES: This AD becomes effective October 13, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of October 13, 2016.

We must receive comments on this AD by November 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9114.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9114; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0171, dated August 22, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

> During inspections, blind fasteners were found installed in engine mounting structure (EMS) upper fittings, frame NS204.7 and upper longerons. The type design specifies that the fasteners at this location must be Hi-Lok fasteners and two solid rivets (monel).
>
> This condition, if not detected and corrected, could cause cracks development, vibration in the engine mount structure, leading to failure of the affected engine mount-to-aeroplane structural connection, possibly resulting in detachment of an engine from the aeroplane when affecting both sides of a nacelle.
>
> To address this unsafe condition, SAAB issued Service Bulletin (SB) 2000–54–035 (hereafter referred to as 'the SB' in this [EASA] AD) to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time * * * [general] visual inspection of the affected areas to determine which type(s) of fasteners are installed, and, depending on findings, accomplishment of applicable corrective action(s) [repair or additional actions as applicable]. This [EASA] AD also requires reporting of all inspection results to SAAB.
>
> This [EASA] AD is considered an interim action and further AD action may follow.

Required actions include a detailed inspection for discrepancies, including gaps between the fastener head and structure, traces of movement, and deformation of the structure. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9114.

Related Service Information Under 1 CFR Part 51

We reviewed SAAB 2000 Service Bulletin 2000–54–035, Revision 01, dated August 12, 2016. The service information describes procedures for an inspection to identify the type of fasteners installed on the upper longerons and upper fittings of the EMS, and a detailed inspection of incorrect (blind) fasteners to detect discrepancies, and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because discrepancies of blind fasteners could cause crack development and vibration in the engine mount structure, which could lead to failure of the affected engine-mount-to-airplane structural connection and resultant detachment of an engine from the airplane when both sides of a nacelle are affected. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9114; Directorate Identifier 2016–NM–146–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,720, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–20–05 Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Amendment 39–18671; Docket No. FAA–2016–9114; Directorate Identifier 2016–NM–146–AD.

(a) Effective Date

This AD becomes effective October 13, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by the discovery of blind fasteners installed in engine mounting structure (EMS) upper fittings that do not meet the type design. We are issuing this AD to detect and correct discrepancies of blind fasteners that could cause crack development and vibration in the engine mount structure, which could lead to failure of the affected engine-mount-to-airplane structural connection and resultant detachment of an engine from the airplane when both sides of a nacelle are affected.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Fastener Identification

Within 30 days or 150 flight hours after the effective date of this AD, whichever occurs first, do a general visual inspection of the upper longerons and upper fittings of the EMS to identify the type of fasteners installed, in accordance with the Accomplishment Instructions of SAAB 2000 Service Bulletin 2000–54–035, Revision 01, dated August 12, 2016.

(h) Inspection for Discrepancies

For any fastener other than the fasteners specified in SAAB 2000 Service Bulletin 2000–54–035, Revision 01, dated August 12, 2016, found during the inspection required by paragraph (g) of this AD: Before further flight, do a detailed inspection for discrepancies of those fasteners, including gaps between the fastener heads and structure, traces of movement, and deformation of the structure, in accordance with the Accomplishment Instructions of SAAB 2000 Service Bulletin 2000–54–035, Revision 01, dated August 12, 2016.

(i) Corrective Action

(1) If, during the inspection as required by paragraph (h) of this AD, any gap between the fastener heads and structure, traces of movement, or deformation of the structure is found: Before further flight obtain repair instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA); and before further flight accomplish those instructions accordingly.

(2) If all fasteners inspected as required by paragraph (h) of this AD are firmly attached, and no deformation of the structure is found: Within 30 days or 150 flight hours after the effective date of the AD, whichever occurs first, obtain repair instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Saab AB, Saab Aeronautics' EASA DOA; and at the applicable time required in the repair instructions, accomplish the repair accordingly.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using SAAB 2000 Service Bulletin 2000–54–035, dated July 22, 2016.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Saab AB, Saab Aeronautics' EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0171, dated August 22, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9114.

(2) Service information identified in this AD that is not incorporated by reference is

available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) SAAB 2000 Service Bulletin 2000–54–035, Revision 01, dated August 12, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 14, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–23081 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6148; Directorate Identifier 2015–NM–154–AD; Amendment 39–18660; AD 2016–19–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by a malfunctioning No. 2 engine intake heater with corrosion on the thermostats and the fuselage skin where the thermostats made contact with the aircraft fuselage skin. This AD requires a general visual inspection for corrosion of the thermostats' mounting surfaces and fuselage skin surface, corrective actions if necessary, and relocating the existing thermostats. We are issuing this AD to prevent corrosion within the thermostats that might cause the switch mechanism to seize in the open position and prevent the activation of the associated engine air intake heater. An inactive engine air intake heater could lead to an engine failure.

DATES: This AD is effective November 2, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6148; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on May 2, 2016 (81 FR 26176) ("the NPRM").

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–24, dated August 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> A malfunctioning Engine Air Intake Heater has been discovered with corrosion on the thermostats and the aeroplane skin where the thermostats are installed. The two thermostats are installed directly under the flight compartment floor along the aeroplane centre line where moisture accumulation and/or migration may occur, which can cause corrosion of the thermostats. Corrosion within the thermostats may seize the switch mechanism open, preventing the activation of the associated Engine Air Intake Heater. Failure of the Engine Air Intake Heater to activate may pose a safety risk to the aeroplane in icing conditions.
>
> Bombardier has issued Service Bulletin (SB) 84–30–10 to inspect, replace if required and relocate the thermostat assembly to rectify this problem. [An inactive engine air intake heater could lead to an engine failure.]

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6148.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014. The service information describes procedures for a general visual inspection for corrosion of the thermostats' mounting surfaces and fuselage skin surface, corrective actions, and relocating the existing thermostats from a lower position on the aircraft skin at X 54.00 between stringers 31P and 32P (next to the centerline) to a higher position at X 54.00 between stringers 26P and 27P. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	12 work-hours × $85 per hour = $1,020	N/A	$1,020	$77,520

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–19–11 Bombardier, Inc.: Amendment 39–18660; Docket No. FAA–2016–6148; Directorate Identifier 2015–NM–154–AD.

(a) Effective Date

This AD is effective November 2, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4184 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

(e) Reason

This AD was prompted by a malfunctioning No. 2 engine intake heater with corrosion on the thermostats and the fuselage skin where the thermostats made contact with the aircraft fuselage skin. We are issuing this AD to prevent corrosion within the thermostats that may cause the switch mechanism to seize in the open position and prevent the activation of the associated engine air intake heater. An inactive engine air intake heater could lead to an engine failure.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of the Thermostats and Replacement

Within 2,000 flight hours or 12 months, whichever occurs first after the effective date of this AD, do a general visual inspection of the thermostats' exterior for any signs of corrosion, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014. If any thermostat is corroded, replace the thermostat before further flight, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014.

(h) Inspection of the Fuselage Skin Surface and Corrective Action

Within 2,000 flight hours or 12 months, whichever occurs first after the effective date of this AD, do a general visual inspection of the fuselage skin surface for skin corrosion, and modify the engine air intake heater thermostat installation, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014.

(1) If the skin corrosion is 0.001 inch deep or less, before further flight remove the corrosion and treat bare metal, in accordance with Accomplishment Instructions of Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014.

(2) If the skin corrosion is greater than 0.001 inch deep, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, Transport Airplane Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraphs (i)(1) through (i)(5) of this AD.

(1) Bombardier Service Bulletin 84–30–10, dated September 7, 2007, provided that the thermostat location label is replaced, in accordance with the Accomplishment

Instructions of Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014, within the compliance times specified in paragraph (g) of this AD.

(2) Bombardier Service Bulletin 84–30–10, Revision A, dated April 7, 2008.

(3) Bombardier Service Bulletin 84–30–10, Revision B, dated January 20, 2010.

(4) Bombardier Service Bulletin 84–30–10, Revision C, dated July 14, 2011.

(5) Bombardier Service Bulletin 84–30–10, Revision D, dated December 20, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–24, dated August 24, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6148.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 84–30–10, Revision E, dated October 10, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 12, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22705 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD; Amendment 39–18637; AD 2016–18–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–15–17 for certain Airbus Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2009–15–17 required an inspection for damage to the protective treatments or any corrosion of all main landing gear (MLG) bogie beams, and application of protective treatments if no damage or corrosion was found. If any damage or corrosion was found, corrective action followed by the application of protective treatments was required. This new AD continues to require inspections for damage to the protective treatments or any corrosion of all MLG bogie beams, application of protective treatments, and corrective action if necessary. This new AD also requires modification of the MLG bogie beams, which terminates the repetitive inspections for any modified bogie beam. This new AD allows optional methods of compliance for certain actions, and adds Airbus Model A330–200 Freighter series airplanes to the applicability. This new AD revises the compliance times and adds a one-time inspection for airplanes that were inspected too early. This AD was prompted by reports of thin paint coats and paint degradation on enhanced main landing gear (MLG) bogie beams, as well as reports that some airplanes have been inspected too early and not re-inspected as needed. We are issuing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, and could result in damage to the airplane and injury to the occupants.

DATES: This AD is effective November 2, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 2, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 2, 2009 (74 FR 37523, July 29, 2009).

ADDRESSES: For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330–A340@airbus.com;* Internet: *http://www.airbus.com.* For Messier-Dowty service information identified in this final rule, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone: 703–450–8233; fax: 703–404–1621; Internet: *https://techpubs.services/messier-dowty.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0828.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0828; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone: 800–647–

5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a second supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009) ("AD 2009–15–17"). AD 2009–15–17 applied to certain Airbus Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. The second SNPRM published in the **Federal Register** on February 5, 2016 (81 FR 6185) ("the second SNPRM"). We preceded the second SNPRM with the first SNPRM, which was published in the **Federal Register** on March 5, 2014 (79 FR 12414) ("the first SNPRM"). We preceded the first SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on September 25, 2013 (78 FR 58978) ("the NPRM"). The NPRM was prompted by reports of thin paint coats and paint degradation on enhanced MLG bogie beams. The NPRM proposed to continue to require inspections for damage to the protective treatments or any corrosion of all MLG bogie beams, application of protective treatments, and corrective action if necessary. The NPRM also proposed to require modification of the MLG bogie beams, which would terminate the repetitive inspections for any modified bogie beam. In addition, the NPRM proposed to allow optional methods of compliance for certain actions, and to add Airbus Model A330–200 Freighter series airplanes to the applicability. The first SNPRM proposed to revise the compliance times and add a one-time inspection for airplanes that were inspected too early. The second SNPRM proposed to clarify the required actions and the specific configurations to which the actions must be applied. We are issuing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, and could result in damage to the airplane and injury to the occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0267R1, dated March 4, 2014; corrected May 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A330–200 Freighter, –200, and –300 series airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> The operator of an A330 aeroplane (which has a common bogie beam with the A340) reported a fracture of the Right Hand (RH) main landing gear (MLG) bogie beam, which occurred while turning during low speed taxi maneuvers. The bogie fractured aft of the pivot point and remained attached to the sliding tube by the brake torque reaction rods. After this RH bogie failure, the aeroplane continued for approximately 40 meters on the forks of the sliding member before coming to rest on the taxiway.
>
> The investigations revealed that this event was due to corrosion pitting occurring on the bore of the bogie beam.
>
> This condition, if not detected and corrected, could lead to a runway excursion event or to detachment of the bogie from the aeroplane, or to MLG collapse, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> To enable early detection and repair of corrosion of the internal surfaces, EASA issued EASA AD 2007–0314 to require a one-time inspection of all MLG bogie beams, except Enhanced MLG bogie beams, and the reporting of the results to Airbus. EASA AD 2007–0314 was revised and later superseded by EASA AD 2008–0093, reducing the inspection threshold period.
>
> The results of subsequent investigations showed thin paint coats and paint degradation, confirmed as well on Enhanced MLG bogie beams. To address this additional concern, EASA issued AD 2011–0141 [which was not mandated by the FAA], retaining the requirements of EASA AD 2008–0093, which was superseded, to require a one-time visual inspection of all MLG bogie beams, including a visual examination of the internal diameter for corrosion or damage to protective treatments of the bogie beam and measurement of the paint thickness on the internal bore, accomplishment of the applicable corrective actions and a modification of the MLG bogie beam to improve the coat paint application method, and application of corrosion protection.
>
> Prompted by in-service requests, EASA issued EASA AD 2012–0015 retaining the requirements of EASA AD 2011–0141, which was superseded, and introducing repetitive inspections of the MLG bogie beams, which allows extension of the compliance time for the MLG bogie beam modification from 15 years to 21 years. Modification of a MLG bogie beam constitutes terminating action for the repetitive inspections for that MLG bogie beam.
>
> Reports on inspection results provided to Airbus show that some aeroplanes were initially inspected too early (before 4 years and 6 months since aeroplane first flight with bogie beam installed/installed after overhaul) and have not been re-inspected as required.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0015, which is superseded, and redefines the inspection periodicity. This [EASA] AD also introduces a specific one-time inspection for aeroplanes that have been inspected too early.
>
> Prompted by operator comments, this [EASA] AD is revised to clarify the required actions and the specific configurations to which the actions must be applied. Appendix 1 of this [EASA] AD has been amended accordingly.
>
> This [EASA] AD is republished to editorially correct paragraph (4).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0828.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the second SNPRM and the FAA's response.

Request To Revise the Applicability of the Second SNPRM

American Airlines (AAL) requested that we revise the applicability of the proposed AD (in the second SNPRM) to exclude airplanes with MLG bogie beams that have had Airbus modification 58896 embodied in-service, as specified in Airbus Service Bulletin A330–32–3237. AAL pointed out that paragraph (c) of the proposed AD (in the second SNPRM) does not reflect MLG bogie beams that were modified in-service.

We disagree with the request to revise the applicability of the proposed AD (in the second SNPRM). Paragraph (k) of this AD specifically requires inspection, repair, modification, and re-identification of the MLG bogie beams. However, paragraph (f) of this AD states that actions already done need not be repeated. If an operator has already accomplished the actions required by paragraph (k) of this AD before the effective date of this AD, then the modified airplane is already in compliance with the corresponding requirements of this AD. We have not made any changes to this AD in this regard.

Additional Changes Made in This AD

We have revised paragraph (m)(1) of this AD to remove reference to paragraph (g) of this AD; the reporting requirement specified in paragraph (m)(1) of this AD is required only for the inspection required by paragraph (k) of this AD.

We have also revised paragraph (m)(2) of this AD to reference the correct service information for reporting inspection findings for the inspection required by paragraph (h) of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the second SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the second SNPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A330–32–3225, Revision 02, including Appendix 1, dated October 26, 2012. This service information describes procedures for cleaning the internal bore and accomplishing a detailed inspection of internal surfaces of the left-hand (LH) and right-hand (RH) MLG bogie beams to detect any damage to the protective treatments and any corrosion, and measuring the paint thickness on the internal bore.
- Airbus Service Bulletin A330–32–3237, Revision 01, including Reporting Sheet, dated October 14, 2011. This service information describes procedures for a detailed inspection for damage and corrosion of the internal bores of the LH and RH MLG bogie beam and repair, as well as modification and re-identification.
- Airbus Service Bulletin A340–32–4268, Revision 03, including Appendix 1, dated January 14, 2013. This service information describes procedures for cleaning the internal bore and accomplishing a detailed inspection of internal surfaces of the LH and RH MLG bogie beams to detect any damage to the protective treatments and any corrosion, and measuring the paint thickness on the internal bore.
- Airbus Service Bulletin A340–32–4279, Revision 01, including Reporting Sheet, dated October 14, 2011. This service information describes procedures for a detailed inspection for damage and corrosion of the internal bores of the LH and RH MLG bogie beam, repair, modification, and reidentification.

Messier-Bugatti-Dowty has issued the following service information.

- Messier-Dowty Service Bulletin A33/34–32–278, Revision 1, including Appendixes A and B, dated August 24, 2011. This service information describes procedures for inspections for damage and corrosion to the protective treatment of the internal bores of the LH and RH MLG bogie beam, and repairs.
- Messier-Dowty Service Bulletin A33/34–32–283, Revision 1, including Appendix A, dated July 10, 2012. This service information describes procedures for modification of the LH and RH MLG bogie beams.
- Messier-Dowty Service Bulletin A33/34–32–284, Revision 1, including Appendix A, dated July 10, 2012. This service information describes procedures for modification of the LH and RH MLG bogie beams.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 51 airplanes of U.S. registry.

We also estimate that it takes about 34 work-hours per product to comply with this AD, and 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $151,725, or $2,975 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours at a labor rate of $85 per work-hour, for a cost of $850 per product. We have no way of determining the number of aircraft that might need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009), and adding the following new AD:

2016–18–07 Airbus: Amendment 39–18637; Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD.

(a) Effective Date

This AD is effective November 2, 2016.

(b) Affected ADs

This AD replaces AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009) (“AD 2009–15–17”).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers (MSN), except those on which Airbus modification 58896 has been embodied in production.

(1) Airbus Model A330–223F, –243F, –201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of thin paint coats and paint degradation on enhanced main landing gear (MLG) bogie beams, as well as reports that some airplanes have been inspected too early and not re-inspected as needed. We are issuing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, and could result in damage to the airplane and injury to the occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections for Certain Airplane Configurations

For airplanes equipped with basic MLG (201252 series), or growth MLG (201490 series): After 54 months at the earliest, but no later than 72 months since the left-hand (LH) or right-hand (RH) MLG bogie beam's first flight on an airplane, or since its first flight on an airplane after overhaul, as applicable, clean the internal bore and accomplish a detailed inspection of internal surfaces of the LH and RH MLG bogie beams to detect any damage to the protective treatments and any corrosion, and measure the paint thickness on the internal bore, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3225, Revision 02, including Appendix 1, dated October 26, 2012; or Airbus Service Bulletin A340–32–4268, Revision 03, including Appendix 1, dated January 14, 2013; as applicable. Repeat the inspections thereafter at intervals not less than 54 months, but not exceeding 72 months, after the most recent inspection. During overhaul of a MLG bogie beam, any corrosion will be removed, which means that the first inspection after overhaul of that MLG bogie beam, as required by this paragraph, is between 54 months and 72 months since its first flight on an airplane after overhaul.

(h) One-Time Detailed Inspection for Certain Airplane Configurations

For airplanes equipped with basic MLG (201252 series), or growth MLG (201490 series) having a LH or RH MLG bogie beam that has already exceeded 72 months since its first flight on an airplane, or since its first flight on an airplane after overhaul, as applicable, as of the effective date of this AD; and that has been inspected as specified in Airbus Service Bulletin A330–32–3225 or Airbus Service Bulletin A340–32–4268, as applicable, earlier than 54 months since first flight of the affected MLG bogie beam on an airplane, or since its first flight on an airplane after its most recent overhaul, as applicable: Within the applicable compliance time indicated in paragraphs (h)(1) through (h)(4) of this AD, clean the internal bore and accomplish a detailed inspection of the internal surfaces of the LH and RH MLG bogie beams to detect any damage to the protective treatments and any corrosion, and measure the paint thickness on the internal bore, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3225, Revision 02, including Appendix 1, dated October 26, 2012; or Airbus Service Bulletin A340–32–4268, Revision 03, including Appendix 1, dated January 14, 2013; as applicable.

(1) For MLG bogie beams having the configurations specified in both paragraphs (h)(1)(i) and (h)(1)(ii) of this AD: Do the detailed inspection specified in the introductory text of paragraph (h) of this AD within 9 months after the effective date of this AD.

(i) MLG bogie beams having between 72 and 120 months since first flight on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(ii) MLG bogie beams on which the first inspection was done after 51 months and before 54 months since first flight of the MLG bogie beam on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(2) For MLG bogie beams having the configurations specified in both paragraphs (h)(2)(i) and (h)(2)(ii) of this AD: Do the detailed inspection specified in the introductory text of paragraph (h) of this AD within 3 months after the effective date of this AD.

(i) MLG bogie beams having between 72 and 120 months since first flight on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(ii) MLG bogie beams on which the first inspection was done after 45 months and before 51 months since first flight of the MLG bogie beam on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(3) For MLG bogie beams having the configurations specified in both paragraphs (h)(3)(i) and (h)(3)(ii) of this AD: Do the detailed inspection specified in the introductory text of paragraph (h) of this AD within 3 months after the effective date of this AD.

(i) MLG bogie beams having between 72 and 96 months since first flight on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(ii) MLG bogie beams which have accumulated, at the effective date of this AD, less than 96 months and on which the first inspection was done before 51 months since first flight of the MLG bogie beam on an airplane, or since the MLG bogie beam's first flight on an airplane after the after the MLG bogie beam's most recent overhaul, as applicable.

(4) For MLG bogie beams having the configurations specified in both paragraphs (h)(4)(i) and (h)(4)(ii) of this AD: Do the detailed inspection specified in the introductory text of paragraph (h) of this AD within 1 month after the effective date of this AD.

(i) MLG bogie beams having between 96 and 120 months since first flight on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(ii) MLG bogie beams which has accumulated, at the effective date of this AD, 96 months or more and on which the first inspection was done before 45 months since first flight of the MLG bogie beam on an airplane, or since the MLG bogie beam's first flight on an airplane after the MLG bogie beam's most recent overhaul, as applicable.

(i) Application of Protective Treatment

If, during any inspection required by paragraph (g) or (h) of this AD, no damage or corrosion is found: Before further flight, apply the protective treatments to the MLG bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendixes A, B, C, and D, dated September 22, 2008.

(j) Repair and Application of Protective Treatment

If, during any inspection required by paragraph (g) or (h) of this AD, any damage or corrosion is found: Before further flight, repair and apply the protective treatments to the MLG bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendixes A, B, C, and D, dated September 22, 2008.

(k) Inspection and Corrective Actions

For airplanes equipped with basic MLG (201252 series), growth MLG (201490 series), or enhanced MLG (10–210 series): Before the accumulation of 252 total months on an MLG bogie beam, or within 90 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD concurrently and in sequence.

(1) Except as provided by paragraph (k)(3) of this AD: Do a detailed inspection for damage and corrosion of the internal bores of the LH and RH MLG bogie beam, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3237 or A340–32–4279, both Revision 01, both including Reporting Sheet, both dated October 14, 2011, as applicable. If any damage or corrosion is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3237 or A340–32–4279, both Revision 01, both including Reporting Sheet, both dated October 14, 2011, as applicable.

(2) Except as provided by paragraph (k)(3) of this AD: Modify and re-identify, as applicable, the LH and RH MLG bogie beams, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3237 or A340–32–4279, both Revision 01, both including Reporting Sheet, both dated October 14, 2011, as applicable.

(3) The inspection requirements of paragraph (k)(1) of this AD, and the modification requirements only of paragraph (k)(2) of this AD, do not apply to any MLG bogie beam with a serial number listed in Appendix A of Messier-Dowty Service Bulletin A33/34–32–283 or A33/34–32–284, both Revision 1, both dated July 10, 2012, as applicable.

(l) Optional Methods of Compliance for Certain Airplane Configurations

Inspections and corrective actions on both MLG bogie beams done in accordance with the instructions of Messier-Dowty Service Bulletin A33/34–32–271, Revision 1, including Appendixes A and B, dated November 16, 2007; or Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendixes A, B, C, and D, dated September 22, 2008; as applicable; are acceptable methods of compliance for the requirements of paragraph (g) of this AD, provided each inspection is accomplished between 54 months and 72 months since the first flight of the affected MLG bogie beam on an airplane, or since the MLG bogie beam's first flight after the MLG bogie beam's most recent overhaul, as applicable.

(m) Reporting Requirement

(1) Submit a report of the findings (both positive and negative) of each inspection required by paragraph (k) of this AD, as applicable, to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, using the applicable Reporting Sheet in Airbus Service Bulletin A330–32–3237, Revision 01, including Reporting Sheet, dated October 14, 2011; or Airbus Service Bulletin A340–32–4279, Revision 01, including Reporting Sheet, dated October 14, 2011; at the applicable time specified in paragraph (m)(1)(i) or (m)(1)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(2) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (h) of this AD to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, using the applicable Reporting Sheet in Airbus Service Bulletin A330–32–3225, Revision 02, including Appendix 1, dated October 26, 2012; or Airbus Service Bulletin A340–32–4268, Revision 03, including Appendix 1, dated January 14, 2013; at the applicable time specified in paragraph (m)(2)(i) or (m)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(n) Optional Method of Compliance for Certain Requirements

(1) Inspections for damage and corrosion to the protective treatment of the internal bores of the LH and RH MLG bogie beam, and repairs, done in accordance with Messier-Dowty Service Bulletin A33/34–32–278, Revision 1, including Appendixes A and B, dated August 24, 2011, are acceptable methods of compliance with the corresponding requirements of paragraph (k)(1) of this AD.

(2) Modification of the LH and RH MLG bogie beams, done in accordance with Messier-Dowty Service Bulletins A33/34–32–283 or A33/34–32–284, both Revision 1, both including Appendix A, both dated July 10, 2012, as applicable, is an acceptable method of compliance with the corresponding requirements of paragraph (k)(2) of this AD.

(o) Optional Terminating Action for Certain Requirements

Modification of both LH and RH MLG bogie beams on an airplane, done in accordance with paragraph (k) of this AD, or as specified in paragraphs (n)(1) and (n)(2) of this AD, terminates the repetitive inspections required by paragraph (g) of this AD for this airplane.

(p) Credit for Previous Actions

(1) This paragraph provides credit for the corresponding inspections and corrective actions done on an LH or RH MLG bogie beam required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–32–3225, dated November 21, 2007; or Revision 1, dated October 30, 2008; provided the inspections and corrective actions were accomplished between 54 months and 72 months since first flight of the affected MLG bogie beam on an airplane, or since its first flight after the MLG bogie beam's most recent overhaul, as applicable. Airbus Service Bulletin A330–32–3225, dated November 21, 2007, is not incorporated by reference in this AD. Airbus Mandatory Service Bulletin A330–32–3225, Revision 01, including Appendix 1, dated October 30, 2008, was incorporated by reference in AD 2009–15–07.

(2) This paragraph provides credit for the corresponding inspections and corrective actions done on an LH or RH MLG bogie beam required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–32–4268, dated November 21, 2007; Revision 01, including Appendix 1, dated October 30, 2008; or Revision 02, dated October 26, 2012; provided these inspections and corrective actions were accomplished between 54 months and 72 months since first flight of the affected MLG bogie beam on an airplane, or since its first flight after the MLG bogie beam's most recent overhaul, as applicable. Airbus Service Bulletin A340–32–4268, dated November 21, 2007; and Revision 02, dated October 26, 2012; are not incorporated by reference in this AD. Airbus Mandatory Service Bulletin A340–32–4268, Revision 01, including Appendix 1, dated October 30, 2008, was incorporated by reference in AD 2009–15–17.

(3) This paragraph provides credit for the corresponding actions required by paragraph (n)(1) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–271, dated September 13, 2007, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the corresponding actions required by paragraphs (j) and (n)(1) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–272, including Appendixes A, B, C, and D, dated November 16, 2007, which is not incorporated by reference in this AD.

(5) This paragraph provides credit for the corresponding actions required by paragraphs (k), (m), and (r)(1)(i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–32–3237, including Reporting Sheet, dated January 18, 2011.

(6) This paragraph provides credit for the corresponding actions required by paragraphs (k), (m), and (r)(1)(i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A340–32–4279, including Reporting Sheet, dated January 18, 2011.

(7) This paragraph provides credit for the corresponding actions required by paragraphs (k)(3), (n)(2), (r)(1)(ii), and (r)(1)(iii) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–283, including Appendix A, dated May 11, 2010, which is not incorporated by reference in this AD.

(8) This paragraph provides credit for the corresponding actions required by paragraphs (k)(3), (n)(2), (r)(1)(ii), and (r)(1)(iii) of this AD, if those actions were performed before the effective date of this AD

using Messier-Dowty Service Bulletin A33/34–32–284, including Appendix A, dated May 11, 2010, which is not incorporated by reference in this AD.

(9) This paragraph provides credit for the corresponding actions required by paragraphs (n)(1) and (r)(1)(ii) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–278, including Appendixes A and B, dated February 17, 2010, which is not incorporated by reference in this AD.

(q) Clarification of Inspection Compliance Times

After accomplishment of the one-time detailed inspection required by paragraph (h) of this AD, the repetitive actions required by paragraph (g) of this AD remain applicable, and must be done within the compliance times specified in paragraph (g) of this AD.

(r) Parts Installation Limitations

(1) After modification of an airplane, as required by paragraph (k) of this AD, or as specified in paragraphs (n)(1) and (n)(2) of this AD, do not install an MLG bogie beam on any airplane unless it is done in compliance with the requirements of paragraph (r)(1)(i), (r)(1)(ii), or (r)(1)(iii) of this AD.

(i) The MLG bogie beam has been modified and re-identified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3237 or A340–32–4279, both Revision 01, both including Reporting Sheet, both dated October 14, 2011, as applicable.

(ii) The MLG bogie beam has been inspected and all applicable corrective actions have been done in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–278, Revision 1, dated August 24, 2011; and modified in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–283 or A33/34–32–284, both Revision 1, both including Appendix A, both dated July 10, 2012.

(iii) The MLG bogie beam has a serial number listed in Appendix A of Messier-Dowty Service Bulletin A33/34–32–283 or A33/34–32–284, both Revision 1, both dated July 10, 2012, as applicable.

(2) As of the effective date of this AD, except as specified in paragraph (r)(1) of this AD, installation of an MLG bogie beam on an airplane is allowed, provided that following the installation it is inspected and all applicable repairs and corrective actions have been done in accordance with the requirements of this AD.

(s) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(t) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) AD 2013–0267R1, dated March 4, 2014; corrected March 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0828.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (u)(5), (u)(6), and (u)(7) of this AD.

(u) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on November 2, 2016.

(i) Airbus Service Bulletin A330–32–3225, Revision 02, including Appendix 1, dated October 26, 2012.

(ii) Airbus Service Bulletin A330–32–3237, Revision 01, including Reporting Sheet, dated October 14, 2011.

(iii) Airbus Service Bulletin A340–32–4268, Revision 03, including Appendix 1, dated January 14, 2013.

(iv) Airbus Service Bulletin A340–32–4279, Revision 01, including Reporting Sheet, dated October 14, 2011.

(v) Messier-Dowty Service Bulletin A33/34–32–278, Revision 1, including Appendixes A and B, dated August 24, 2011.

(vi) Messier-Dowty Service Bulletin A33/34–32–283, Revision 1, including Appendix A, dated July 10, 2012.

(vii) Messier-Dowty Service Bulletin A33/34–32–284, Revision 1, including Appendix A, dated July 10, 2012.

(4) The following service information was approved for IBR on September 2, 2009 (74 FR 37523, July 29, 2009).

(i) Messier-Dowty Service Bulletin A33/34–32–271, Revision 1, including Appendixes A and B, dated November 16, 2007.

(ii) Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendixes A, B, C, and D, dated September 22, 2008.

(5) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com*; Internet: *http://www.airbus.com.*

(6) For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet: *https://techpubs.services/messier-dowty.com.*

(7) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 24, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21150 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8161; Directorate Identifier 2016–CE–018–AD; Amendment 39–18664; AD 2016–19–15]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain REIMS AVIATION S.A. Model F406 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks found in the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure. We are issuing this AD to prevent structural failure of the horizontal stabilizer and/or the vertical fin rear spar attach structure, which could result in damage to the airplane and loss of control.

DATES: This AD is effective November 2, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@asi-aviation.fr*; Internet: *http://asi-aviation.fr/page-Accueil.html.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–8161.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain REIMS AVIATION S.A. Model F406 airplanes. The NPRM was published in the **Federal Register** on July 7, 2016 (81 FR 44244). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> Fatigue cracks and holes elongation were found on horizontal stabilizer fittings on F406 aeroplanes having accumulated more than 2 500 flight hours (FH).
>
> This condition, if not detected and corrected, could result in loss of structural integrity of the horizontal stabilizer fittings.
>
> To initially address this issue, DGAC France published AD 2001–161 to require repetitive visual inspections of the fittings, and, dependings on findings, replacement with a serviceable part.
>
> Since that AD was issued, during maintenance, cracks were found on a slice plate of horizontal stabilizer fittings. Consequently, ASI Aviation issued Service Bulletin (SB) CAB01–5 Revision 2 to provide instructions for additional eddy-current non-destructive test (NDT) inspections.
>
> For the reasons described above, this AD retains the requirements of DGAC France AD 2001–161, which is superseded, and requires the additional NDT inspections.

The MCAI can be found in the AD docket on the Internet at *https://www.regulations.gov/document?D=FAA-2016-8161-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 44244, July 7, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 44244, July 7, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 44244, July 7, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015. The service information describes procedures for inspecting the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure for cracks and oversized bolt holes and making all necessary repairs and replacements. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 20.5 work-hours per product to comply with the basic inspections requirements of this AD (18 work-hours to remove the horizontal stabilizer to gain access for the inspection and 2.5 work-hours to do the inspection). The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the inspection on U.S. operators to be $12,197.50, or $1,742.50 per product.

We estimate that it will take about 25 work-hours per product to reinstall the horizontal stabilizer after doing the inspection and any necessary repairs or replacements. Based on these figures, we estimate the cost of this action on U.S. operators to be $14,875, or $2,125 per product.

In addition, we estimate any necessary corrective actions as follows:

—Installing Service Kit SKRA406–11–Rev. 2 will take about 3 work-hours and require parts costing $65, for a cost of $320 per product. We have no way of determining the number of products that may need this action.

—Installing Service Kit SK406–137 (which superseded Service Kit SKRA406–12–Rev. 2) will take about 20 work-hours and require parts costing $2,000, for a cost of $3,800 per product. We have no way of determining the number of products that may need this action.

—Installing Service Kit SKRA406–13–Rev. 2 will take about 8 work-hours and require parts costing $1,800, for a cost of $2,480 per product. We have no way of determining the number of products that may need this action.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–19–15 REIMS AVIATION S.A.: Amendment 39–18664; Docket No. FAA–2016–8161; Directorate Identifier 2016–CE–018–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 2, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to REIMS AVIATION S.A. F406 airplanes, serial numbers F406–0001 through F406–0098, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizers.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks found in the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure. We are issuing this AD to prevent structural failure of the horizontal stabilizer and/or the vertical fin rear spar attach structure, which could result in damage to the airplane and loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) At whichever of the compliance times specified in paragraphs (f)(1)(i) through (iii) of this AD that occurs the latest after November 2, 2016 (the effective date of this AD), and repetitively thereafter every 2,400 hours time-in-service (TIS), do a visual and non-destructive test (NDT) inspection of the horizontal stabilizer splice plate assembly, part number (P/N) 6032183–1 or P/N 406–5518–32183–100 (as applicable), and the attach structure assembly P/N 6031210–1. Do the inspections following the Accomplishment Instructions in ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015.

(i) Before accumulating 2,500 hours TIS; or

(ii) Within the next 100 hours TIS; or

(iii) At the next 600-hour inspection.

(2) During any inspection required by paragraph (f)(1) of this AD, if any oversized bolt hole or crack is detected on the horizontal stabilizer splice plate assembly or attach structure assembly, before further flight, repair or replace the affected part with a serviceable part following the Accomplishment Instructions in ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015. After taking the necessary corrective action, continue with the repetitive inspection specified in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0101, dated 25 May 25, 2016, and ASI Aviation Service Kit SKRA40611–Rev. 2, dated December 3, 2015, ASI Service Kit SK406–137, dated December 3, 2015 (which superseded ASI Aviation Service Kit SKRA406–12–Rev. 2, dated December 3, 2015), and ASI Aviation Service Kit SKRA406–13–Rev. 2, dated December 3, 2015, for related information. You may examine the MCAI in the AD docket on the Internet at *https://www.regulations.gov/document?D=FAA-2016-8161-0002.*

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015.

(ii) Reserved.

(3) For ASI Aviation service information identified in this AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@asi-aviation.fr;* Internet: *http://asi-aviation.fr/page-Accueil.html.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on September 16, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22830 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–4532; File No. S7–16–16]

Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Order With Respect to FINRA Rule 2030

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is issuing an order finding that Financial Industry Regulatory Authority ("FINRA") rule 2030 (the "FINRA Pay to Play Rule") imposes substantially equivalent or more stringent restrictions on broker-dealers than rule 206(4)–5 (the "SEC Pay to Play Rule) under the Investment Advisers Act of 1940 (the "Advisers Act") imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

DATES: This Order was issued by the Commission on September 20, 2016.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Sirimal R. Mukerjee, Senior Counsel, Melissa Roverts Harke, Senior Special Counsel, or Sara Cortes, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The SEC Pay to Play Rule [17 CFR 275.206(4)–5] under the Advisers Act [15 U.S.C. 80b] prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees ("covered associates") make a contribution to certain elected officials or candidates. Rule 206(4)–5 also prohibits an adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any third-party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third-party is a "regulated person" ("third-party solicitor ban"). Rule 206(4)–5 defines a "regulated person" as an SEC-registered investment adviser, a registered broker or dealer subject to pay to play restrictions adopted by a registered national securities association that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made, or a registered municipal advisor subject to pay to play restrictions adopted by the Municipal Securities Rulemaking Board that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made. In addition, in order for a broker-dealer or municipal advisor to be a regulated person under rule 206(4)–5, the Commission must find, by order, that these pay to play rules impose substantially equivalent or more stringent restrictions on broker-dealers or municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and are consistent with the objectives of the SEC Pay to Play Rule.

On December 16, 2015, the Financial Industry Regulatory Authority ("FINRA") proposed a rule change (Exchange Act Rel. No. 76767 (Dec. 24, 2015) [80 FR 81650 (Dec. 30, 2015)]) to adopt the FINRA Pay to Play Rule, which would establish pay to play rules for its member firms. On August 25, 2016, the Commission approved the FINRA Pay to Play Rule (Exchange Act Rel. No. 78683 (Aug. 25, 2016) [81 FR 60051 (Aug. 31, 2016)]).

On August 25, 2016, the Commission also issued a notice of intent to issue an order (Investment Advisers Act Rel. No. 4511 (Aug. 25, 2016) [81 FR 60653 (Sept. 2, 2016)]) finding that the FINRA Pay to Play Rule imposes substantially equivalent or more stringent restrictions on brokers-dealers than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule. The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued unless a hearing was ordered. The Commission has not received a request for a hearing.

Accordingly, the Commission hereby finds that the FINRA Pay to Play Rule imposes substantially equivalent or more stringent restrictions on broker-dealers than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

By the Commission.

Dated: September 20, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–23225 Filed 9–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–4531; File No. S7–17–16]

Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Order With Respect to MSRB Rule G–37

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is issuing an order finding that Municipal Securities Rulemaking Board ("MSRB") rule G–37 (the "MSRB Pay to Play Rule") imposes substantially

equivalent or more stringent restrictions on municipal advisors than rule 206(4)–5 (the "SEC Pay to Play Rule) under the Investment Advisers Act of 1940 (the "Advisers Act") imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

DATES: This Order was issued by the Commission on September 20, 2016.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Sirimal R. Mukerjee, Senior Counsel, Melissa Roverts Harke, Senior Special Counsel, or Sara Cortes, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The SEC Pay to Play Rule [17 CFR 275.206(4)–5] under the Advisers Act [15 U.S.C. 80b] prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees ("covered associates") make a contribution to certain elected officials or candidates. Rule 206(4)–5 also prohibits an adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any third-party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third-party is a "regulated person" ("third-party solicitor ban"). Rule 206(4)–5 defines a "regulated person" as an SEC-registered investment adviser, a registered broker or dealer subject to pay to play restrictions adopted by a registered national securities association that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made, or a registered municipal advisor subject to pay to play restrictions adopted by the Municipal Securities Rulemaking Board (the "MSRB") that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made. In addition, in order for a broker-dealer or municipal advisor to be a regulated person under rule 206(4)–5, the Commission must find, by order, that these pay to play rules impose substantially equivalent or more stringent restrictions on broker-dealers or municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and are consistent with the objectives of the SEC Pay to Play Rule.

On December 16, 2015, the MSRB filed with the Commission proposed amendments to the MSRB Pay to Play Rule to extend its application to municipal advisors, which the Commission published for notice and comment on December 23, 2015 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 19b–4 thereunder (Exchange Act Rel. No. 76763 (Dec. 23, 2015) [80 FR 81710 (Dec. 30, 2015)]). On February 17, 2016, the MSRB published a regulatory notice announcing that the proposed amendments to the MSRB Pay to Play Rule were deemed approved by the Commission under section 19(b)(2)(D) of the Exchange Act on February 13, 2016 and that the effective date of the rule was August 17, 2016.

On August 25, 2016, the Commission issued a notice of intent to issue an order (Investment Advisers Act Rel. No. 4512 (Aug. 25, 2016) [81 FR 60651 (Sept. 2, 2016)]) finding that the MSRB Pay to Play Rule imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule. The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued unless a hearing was ordered. The Commission has not received a request for a hearing.

Accordingly, the Commission hereby finds that the MSRB Pay to Play Rule imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

By the Commission.

Dated: September 20, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–23224 Filed 9–27–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–D–2335]

Use of the Term "Healthy" in the Labeling of Human Food Products: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled "Use of the Term 'Healthy' in the Labeling of Human Food Products: Guidance for Industry." The guidance advises manufacturers who wish to use the implied nutrient content claim "healthy" to label their food products as provided by our regulations. More specifically, the guidance advises food manufacturers of our intent to exercise enforcement discretion with respect to the implied nutrient content claim "healthy" on foods that have a fat profile of predominantly mono and polyunsaturated fats, but do not meet the regulatory definition of "low fat", or that contain at least 10 percent of the Daily Value (DV) per reference amount customarily consumed (RACC) of potassium or vitamin D.

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2335 for "Use of the Term 'Healthy' in the Labeling of Human Food Products: Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled "Use of the Term 'Healthy' in the Labeling of Human Food Products: Guidance for Industry." We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

Under section 403(r)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(r)(1)(A)), a food is misbranded if it bears claims, either express or implied, that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA (see section 403(r)(2) of the FD&C Act). Our food labeling regulations at § 101.65(d) (21 CFR 101.65(d)) provide the regulatory definition for use of the term "healthy" or related terms (such as "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness") as an implied nutrient content claim on the label or in labeling of a food. This definition establishes the following nutrient conditions for bearing a "healthy" claim: (1) Specific criteria for nutrients to limit in the diet, such as total fat, saturated fat, cholesterol, and sodium; and (2) requirements for nutrients to encourage in the diet, including vitamin A, vitamin C, calcium, iron, protein, and fiber. The criteria are linked to elements in the Nutrition Facts label and serving size regulations (see §§ 101.9 and 101.12). The nutrient criteria to use the claim can vary for different food categories (*e.g.*, fruits and vegetables, or seafood and game meat) (§ 101.65(d)(2)).

In the **Federal Register** of May 27, 2016, we issued final rules updating the Nutrition Facts label and serving size information for packaged foods to reflect new scientific information, including the link between diet and chronic diseases such as obesity and heart disease (see 81 FR 33742, "Food Labeling: Revision of the Nutrition and Supplement Facts Labels"; 81 FR 34000 "Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments"). Updates to the Nutrition Facts label include changes in the individual nutrients that must be declared and also changes to the DV of other individual nutrients, reflecting changes in recommended intake levels, based on current science.

Because the science supporting public health recommendations for intake of various nutrients has evolved, as reflected in the updated Nutrition Facts Label, FDA intends to exercise enforcement discretion with respect to some of the criteria for bearing the implied nutrient content claim "healthy." In particular, we intend to exercise enforcement discretion with respect to the current requirement that any food bearing the nutrient content claim "healthy" meet the low fat requirement provided that: (1) The amounts of mono- and polyunsaturated fats are declared on the label; and (2) the amounts declared constitute the majority of the fat content.

Similarly, we intend to exercise enforcement discretion with respect to the current requirement that any food bearing the nutrient content claim "healthy" contain at least 10 percent of the DV per RACC of vitamin A, vitamin C, calcium, iron, protein, or fiber, if the food instead contains at least 10 percent of the DV per RACC of potassium or vitamin D.

We are issuing this guidance without prior public comment under 21 CFR 10.115(g)(2) because we have determined that prior public participation is not feasible or appropriate, as this guidance implements a temporary enforcement policy while we update our regulations to be consistent with the final Nutrition Facts Label rule. However, as with all Agency guidances, the public may comment on the guidance at any time.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web sites listed in the previous sentence to find the most current version of the guidance.

Dated: September 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–23367 Filed 9–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC52

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim Final Rule.

SUMMARY: The Department of the Treasury is issuing this Interim Final Rule to change when the statutory three percent cap on administrative expenses is applied to the Gulf Coast Ecosystem Restoration Council (Council) under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act or Act).

DATES: *Effective date for the Interim Final Rule:* September 28, 2016. Written comments on the Interim Final Rule must be received on or before: November 14, 2016.

ADDRESSES: Treasury invites comments on the topic addressed in this Interim Final Rule. Comments may be submitted by any of the following methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Mail: Send to Department of the Treasury, Attention Janet Vail, Office of Gulf Coast Restoration, Office of the Fiscal Assistant Secretary, Room 2112; 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury also will make such comments available for public inspection and copying in Treasury's Library, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Janet Vail, Office of Gulf Coast Restoration, *restoreact@treasury.gov* or 202–622–6873.

SUPPLEMENTARY INFORMATION:

I. Background

The Act makes funds available for the restoration and protection of the Gulf Coast region, and certain programs with respect to the Gulf of Mexico, through a trust fund in the Treasury of the United States known as the Gulf Coast Restoration Trust Fund (trust fund). The trust fund holds 80 percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* Oil Spill. The Act gives Treasury several roles in administering the trust fund. One role is to establish procedures, in consultation with the Departments of the Interior and Commerce, concerning the expenditure of amounts from the trust fund and compliance measures for the programs and activities carried out under the Act. On December 14, 2015, Treasury promulgated final regulations on the RESTORE Act, 80 FR 77239, which became effective on February 12, 2016.

The Act established an independent Federal entity, the Gulf Coast Ecosystem Restoration Council (Council), to administer certain components of the Act, including the Comprehensive Plan Component. The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, currently the Secretary of Agriculture, serves as Chairperson of the Council. The authority for the Council terminates on the date all funds in the trust fund have been expended.

The Council is responsible for developing and implementing a Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region. To carry out the Comprehensive Plan, the Act makes available to the Council, 30 percent of penalties deposited into the trust fund plus one half of interest earned on trust fund investments.

The Act provides that "[o]f the amounts received by the Council . . ., not more than 3 percent may be used for administrative expenses, including staff," to carry out the Comprehensive Plan. 33 U.S.C. 1321(t)(2)(B)(iii).

The Act does not specify when the statutory three percent cap on administrative expenses is applied to the Council.[1] In its final regulations, Treasury specified that "the three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later." 31 CFR 34.204(b). The final regulations recognized that as a new independent Federal entity, the Council's startup administrative expenses would be greater in its initial years, and as a result the final regulations apply the three percent cap for administrative expenses at the end of the fourth fiscal year, and at the end of each fiscal year thereafter.

However, in the Supplementary Information section of the final regulations, Treasury stated that it "will propose to cap the Council's administrative expenses at three percent of amounts the Council receives under the Comprehensive Plan Component before the termination of the Trust Fund," and open this proposal for a 45 day comment period.[2] Under this formulation, the application of the three percent limit to the Council's administrative expenses would be extended from the end of the fourth fiscal year to the date that the trust fund terminates. Treasury expects that the trust fund will terminate after 2032. Treasury included this language because the Council expressed a need for more flexibility on when the statutory three percent cap on administrative expenses will be applied. Specifically, Treasury understands that the Council anticipated its annual administrative expenses would remain relatively constant, while the amount of funds received and transferred by the Council for projects undertaken by its members may vary considerably from one year to the next, depending on the Council's funded priorities list. The Council also anticipated that its members would seek to fund large-scale projects under the Comprehensive Plan Component, but anticipated that such large-scale projects would occur in later years after sufficient civil penalties had been deposited into the trust fund. Treasury supports the Council's goal of restoring and protecting the Gulf Coast region under the Comprehensive Plan Component, and is amending section 34.204(b), with a 45 day comment period.

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[1] Treasury considered whether the three percent limitation applies at any time, but determined that Congress did not provide for such a requirement. Specifically, the Act was enacted as part of Moving Ahead for Progress in the 21st Century Act (MAP–21). MAP–21 contains non-RESTORE Act sections that include limitations that apply "at any time." *See* MAP–21 § 100121. Treasury believes that if Congress had intended the three percent limitation on administrative expenses to apply "at any time," Congress would have included those words in the RESTORE Act just as it did elsewhere in MAP–21. Moreover, such a requirement would undermine the RESTORE Act's purpose of ensuring effective and long-term planning in the restoration of the Gulf Coast.

[2] 80 FR 77239, 77241.

II. This Interim Rule

For the reasons described above, Treasury is amending when the statutory three percent cap on administrative expenses is applied to the Council under 31 CFR 34.204(b). This Interim Final Rule provides that the Council's three percent limit applies to the total amount the Council will receive under the Comprehensive Plan Component and ensures that the Council will not exceed the statutory three percent cap before the termination of the trust fund. Specifically, the Interim Final Rule provides that amounts used by the Council for administrative expenses may not at any time exceed three percent of the total of the amounts received by the Council from the trust fund and the amounts in the trust fund that are allocated to, but not yet received by, the Council. Treasury believes that this Interim Final Rule balances the Council's need for greater flexibility with compliance with the statutory limitation. The Interim Final Rule amends only section 34.204(b) pertaining to when the three percent cap on administrative expenses is measured. It does not amend the definition of ''administrative expenses'' found at section 34.2. Nor does it amend section 34.204(a) regarding limitations on administrative costs associated with grants from the Council under the Comprehensive Plan Component.[3]

Treasury requests public comment on the amendment to section 34.204(b).

III. Procedural Requirements

A. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The amendment to the regulation is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Accordingly, it has been reviewed by the Office of Management and Budget.

C. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that agencies issue regulations with prior notice and an opportunity for public comment and that rules should become effective 30 days after publication in the **Federal Register**. See 5 U.S.C. 553. The APA, however, allows agencies to dispense with these procedures when the agency finds that good cause exists. In this case, Treasury finds that good cause exists to dispense with prior notice and comment procedures and make this rule immediately effective. As discussed earlier in the preamble, the revision in this Interim Final Rule amends when the Council calculates the statutorily required three percent administrative expense limitation, and does not impose any new obligations on the Act's eligible recipients. While Treasury had previously indicated it would issue a proposed rule, Treasury has determined that the revision will have minimal, and more than likely no, effect on the Act's eligible recipients. Nor does the Interim Final Rule impact the receipt and deposit into the trust fund of the civil penalties which are generally fixed by consent decree. Finally, the revision will help ensure that the Council can continue to function effectively by supporting predictable, long term financial planning and operations. As a result, Treasury has determined that prior notice and comment and a delayed effective date are unnecessary and that good cause exists to make this Interim Final Rule effective immediately.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth herein, the Department of the Treasury amends 31 CFR part 34 to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

■ 2. Revise paragraph (b) of § 34.204 to read as follows:

§ 34.204 Limitations on administrative costs and administrative expenses.

* * * * *

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses. The three percent limit is applied to the amounts it receives under the Comprehensive Plan Component before termination of the Trust Fund. Amounts used for administrative expenses may not at any time exceed three percent of the total of the amounts received by the Council and the amounts in the Trust Fund that are allocated to, but not yet received by, the Council under § 34.103.

David A. Lebryk,
Fiscal Assistant Secretary.

[FR Doc. 2016–23348 Filed 9–27–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0883]

RIN 1625–AA00

Safety Zone; Main Branch of the Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Main Branch of the Chicago River, Chicago, IL. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and after the filming of a motion picture from a low flying helicopter. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

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[3] The final regulations define the term ''administrative expenses.'' 31 CFR 34.2. Note that the final regulations distinguish ''administrative expenses'' from ''administrative costs,'' also defined in 31 CFR 34.2.

DATES: This rule will be effective from 6 p.m. on October 1, 2016 to 11 p.m. on October 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0883 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Lindsay Cook, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *Lindsay.N.Cook@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish a NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the filming from a low flying helicopter on October 1, 2016, or an alternate date of October 2, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

On October 1, 2016 or an alternate date of October 2, 2016, filming from a low flying helicopter will take place on the Main Branch of the Chicago River between the Franklin-Orleans Street Highway Bridge and the Michigan Avenue Highway Bridge in Chicago, IL. The Captain of the Port Lake Michigan has determined that the filming from a low flying helicopter will pose a significant risk to public safety and property. Such hazards include rotor turbulence, strong gusts of air, and close proximity of any vessel on the Chicago River.

IV. Discussion of the Rule

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to ensure the safety of the public during the filming from a low flying helicopter on the Main Branch of the Chicago River. This safety zone will be enforced intermittently from 6 p.m. to 11 p.m. on October 1, 2016, or an alternate date of October 2, 2016. This zone will encompass all waters of the Main Branch of the Chicago River between the Franklin-Orleans Street Highway Bridge and the Michigan Avenue Highway Bridge in Chicago, IL.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced intermittently on October 1, 2016, or an alternate date of October 2, 2016 from 6 p.m. to 11 p.m. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit on a portion of the Main Branch of the Chicago River on October 1, 2016, or an alternate date of October 2, 2016 from 6 p.m. to 11 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Public Notice of Safety Zone so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive order 13132.

Also, this rule does not have tribal implications under Executive order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for filming from a low flying helicopter on the Main Branch of the Chicago River in Chicago, IL. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0883 to read as follows:

§ 165.T09–0883 Safety Zone; Main Branch of the Chicago River, Chicago, IL.

(a) *Location.* All waters of the Main Branch of the Chicago River between the Franklin-Orleans Street Highway Bridge and the Michigan Avenue Highway Bridge.

(b) *Enforcement Period.* This rule will be enforced intermittently on October 1, 2016 from 6 p.m. to 11 p.m. or an alternate date of October 2, 2016 from 6 p.m. to 11 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: September 21, 2016.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2016–23318 Filed 9–27–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0221; FRL–9951–54–Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Revisions to Major New Source Review Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving severable portions of revisions to the Oklahoma New Source Review (NSR) State Implementation Plan (SIP) submitted by the State of Oklahoma on June 24, 2010; July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013. These revisions update the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) permit programs to be consistent with federal permitting requirements and make general updates to the Oklahoma SIP to support major NSR permitting. We are taking this final action under section 110, parts C and D of the Clean Air Act (CAA).

DATES: This rule is effective on October 28, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0221. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means the EPA.

I. Background

The background for this action is discussed in detail in our June 30, 2016 proposal at 81 FR 42587. In that document we proposed to approve revisions to the General Provisions in the Oklahoma SIP submitted on July 16, 2010 and December 27, 2010. These revisions included updates to the definitions and units, abbreviations, and acronyms used throughout the Oklahoma SIP; provisions establishing the ability to incorporate by reference federal requirements; revisions to the PSD increments regulated under the Oklahoma SIP; and updates to the Emission Inventory provisions. We also proposed to approve revisions to the Oklahoma PSD and NNSR Programs that had been submitted on June 24, 2010; July 16, 2010; February 6, 2012; and January 18, 2013. These proposed revisions had been submitted by the State of Oklahoma to address amendments to the federal PSD and NNSR regulations made in the following final rules:

- NSR Reform Rule (67 FR 800186, December 31, 2002) and (68 FR 63021, November 7, 2003);
- Implementation of the 8-hour Ozone (O_3) NAAQS-Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O_3 NAAQS (70 FR 71612, November 29, 2005);
- PSD and NNSR: Reasonable Possibility in Recordkeeping (72 FR 72607, December 21, 2007);
- NSR $PM_{2.5}$ Implementation Rule (73 FR 28321, May 16, 2008);
- PSD for $PM_{2.5}$—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (75 FR 64864, October 20, 2010);
- GHG Tailoring Rule (75 FR 31514, June 3, 2010) (specific to PSD permitting only); and
- PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule (76 FR 17548, March 30, 2011).

The EPA provided a 30-day comment period on our proposed action. We did not receive any comments on our proposed action. As such, we are finalizing as proposed.

II. Final Action

We are approving the following severable revisions to the Oklahoma SIP submitted on June 24, 2010; July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013. The revisions were adopted and submitted in accordance with the requirements of the CAA and the EPA's regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the Oklahoma PSD and NNSR programs are consistent with our major source permitting regulations at 40 CFR 51.160–51.166 and the associated policy and guidance. Therefore, under section 110 and parts C and D of the Act, the EPA approves into the Oklahoma SIP the following revisions:

TABLE 1—REVISIONS TO THE OKLAHOMA SIP

Section	Title	Effective date	Submittal date
OAC 252:100–1–1	General Provisions, Purpose	June 12, 2003	July 16, 2010.
OAC 252:100–1–2	General Provisions, Statutory definitions	June 12, 2003	July 16, 2010.
OAC 252:100–1–3	General Provisions, Definitions	June 12, 2003	July 16, 2010.
		July 1, 2008	July 16, 2010.
		July 1, 2009	July 16, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–1–4	General Provisions, Units, Abbreviations and acronyms.	June 12, 2003	July 16, 2010.
		July 1, 2009	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–2–1	Incorporation by Reference (IBR) Purpose	July 1, 2012	January 18, 2013.
OAC 252:100–2–3	IBR, Incorporation by Reference	July 1, 2012	January 18, 2013.
OAC 252:100–3–4	Air Quality Standards and Increments, Significant Deterioration Increments.	June 15, 2005	December 27, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100, Appendix P	Regulated Air Pollutants	June 15, 2007	July 16, 2010.
OAC 252:100, Appendix Q	Incorporation by Reference	July 1, 2009	July 16, 2010.
		July 1, 2012	January 18, 2013.
OAC 252:100–5–1.1	Definitions	June 15, 2007	July 16, 2010.
OAC 252:100–5–2.1	Emission Inventory	June 11, 2004	July 16, 2010.
		June 15, 2007	July 16, 2010.
OAC 252:100–8–1.1	General Provisions, Definitions	June 15, 2006	July 16, 2010.
OAC 252:100–8–30	Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas, Applicability.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.

TABLE 1—REVISIONS TO THE OKLAHOMA SIP—Continued

Section	Title	Effective date	Submittal date
OAC 252:100–8–31	PSD, Definitions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–32	PSD, Source Applicability Determination	Revoked June 15, 2006	Revoked July 16, 2010.
OAC 252:100–8–32.1	PSD Ambient Air Increments and Ceilings	June 15, 2006	July 16, 2010.
OAC 252:100–8–32.2	PSD Exclusion from Increment Consumption	June 15, 2006	July 16, 2010.
OAC 252:100–8–32.3	PSD Stack Heights	June 15, 2006	July 16, 2010.
OAC 252:100–8–33	PSD, Exemptions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–34	PSD, Control Technology Review	June 15, 2006	July 16, 2010.
OAC 252:100–8–35	PSD Air Quality Impact Evaluation	June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–35.1	PSD Source Information	June 15, 2006	July 16, 2010.
OAC 252:100–8–35.2	PSD Additional Impact Analyses	June 15, 2006	July 16, 2010.
OAC 252:100–8–36	PSD Source Impacting Class I Areas	June 15, 2006	July 16, 2010.
OAC 252:100–8–36.2	PSD Source Obligation	June 15, 2006	July 16, 2010.
OAC 252:100–8–37	PSD, Innovative Control Technology	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–38	PSD, Actuals PAL	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–39	PSD Severability	June 15, 2006	July 16, 2010.
OAC 252:100–8–50	Majors Affecting Nonattainment Areas (NNSR), Applicability.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–50.1	NNSR, Incorporation by Reference	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–51	NNSR, Definitions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–51.1	NNSR Emission reductions and offsets	June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–52	NNSR, Applicability determination for sources in attainment areas causing or contributing to NAAQS violations.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–53	NNSR, Exemptions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–54	NNSR Requirements for sources located in nonattainment areas.	June 15, 2006	July 16, 2010.
OAC 252:100–8–54.1	NNSR, Ozone and PM_{10} precursors	June 1, 2009	June 24, 2010.
OAC 252:100–8–55	NNSR, Source Obligation	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–56	NNSR, Actuals PAL	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–57	NNSR Severability	June 15, 2006	July 16, 2010.

As a result of this final approval of the revisions to the Oklahoma SIP addressing the GHG Step 1 permitting requirements, we are removing the provisions at 40 CFR 52.1929(c), under which the EPA narrowed the applicability of the Oklahoma PSD program to regulate sources consistent with federal requirements because these provisions at 40 CFR 52.1929(c) are no longer necessary.

The EPA finds that the February 6, 2012, revisions to the Oklahoma NNSR program address all required NNSR elements for the implementation of the 1997 and 2006 $PM_{2.5}$ NAAQS. We note that the Oklahoma NNSR program does not include regulation of VOCs and ammonia as $PM_{2.5}$ precursors. However, as section 189(e) of the Act requires regulation of $PM_{2.5}$ precursors that significantly contribute to $PM_{2.5}$ levels "which exceed the standard in the area" and Oklahoma does not have a designated $PM_{2.5}$ nonattainment area, the revisions addressing only SO_2 and NO_X are not inconsistent with the requirements of the CAA. In the event that an area is designated nonattainment for the 2012 $PM_{2.5}$ NAAQS, or any other future $PM_{2.5}$ NAAQS, Oklahoma will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of $PM_{2.5}$ precursors.

The EPA is also finalizing a ministerial correction to 40 CFR 52.1920(c) to remove a duplicate entry for the SIP approval of OAC 252:100–5–1. We are removing the first listing of this section; we retain the identical entry in numerical order under OAC, Title 252, Subchapter 5—Registration, Emissions Inventory, and Annual Operating Fees.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Oklahoma regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL—Oklahoma

■ 2. In § 52.1920(c), the table titled "EPA Approved Oklahoma Regulations" is amended by:

■ a. Revising the entries for 252:100–1–1, 252:100–1–2, 252:100–1–3, 252:100–3–4, 252:100–5–1.1, 252:100–5–2.1, 252:100–8–1.1, 252:100–8–30, 252:100–8–31, 252:100–8–33, 252:100–8–34, 252:100–8–35, 252:100–8–36, 252:100–8–37, 252:100–8–50, 252:100–8–51, 252:100–8–52, 252:100–8–53, and 252:100–8–54;

■ b. Adding a centered heading titled "Subchapter 2: Incorporation by Reference" and entries for 252:100–2–1 and 252:100–2–3 in numerical order;

■ c. Adding entries in numerical order for 252:100–1–4, 252:100–8–32.1, 252:100–8–32.2, 252:100–8–32.3, 252:100–8–35.1, 252:100–8–35.2, 252:100–8–36.2, 252:100–8–38, 252:100–8–39, 252:100–8–50.1, 252:100–8–51.1, 252:100–8–54.1, 252:100–8–55, 252:100–8–56, 252:100–8–57, 252:100 Appendix P, and 252:100 Appendix Q; and

■ d. Removing the first centered heading titled "Subchapter 5. Registration, Emissions Inventory and Annual Operating Fees", the first entry for 252:100–5–1, and the entry for 252:100–8–32.

The additions and revisions read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * * * *				
Chapter 100 (OAC 252:100). Air Pollution Control				
Subchapter 1. General Provisions				
252:100–1–1	Purpose	6/12/2003	9/28/2016, [Insert **Federal Register** citation].	
252:100–1–2	Statutory definitions	6/12/2003	9/28/2016, [Insert **Federal Register** citation].	
252:100–1–3	Definitions	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	SIP does not include revisions to the definition of "carbon dioxide equivalent emissions" for the GHG Biomass Deferral, effective on 7/1/2012 and submitted on 1/13/2013.
252:100–1–4	Units, abbreviations and acronyms.	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	
Subchapter 2: Incorporation by Reference				
252:100–2–1	Purpose	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	
252:100–2–3	Incorporation by reference	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	
Subchapter 3: Air Quality Standards and Increments				
* * * * * * *				
252:100–3–4	Significant deterioration increments.	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	
Subchapter 5: Registration, Emissions Inventory and Annual Operating Fees				
* * * * * * *				
252:100–5–1.1	Definitions	6/15/2007	9/28/2016, [Insert **Federal Register** citation].	
* * * * * * *				
252:100–5–2.1	Emission inventory	6/15/2007	9/28/2016, [Insert **Federal Register** citation].	
* * * * * * *				
Subchapter 8: Permits for Part 70 Sources				
Part 1. General Provisions				
* * * * * * *				
252:100–8–1.1	Definitions	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
* * * * * * *				
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas				
252:100–8–30	Applicability	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–8–31	Definitions	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	SIP does not include paragraph (E) of the definition of "subject to regulation", effective on 7/1/2011 and submitted 2/6/2012 for Step 2 GHG permitting. SIP does not include revisions to the definition of "subject to regulation" paragraph (B)(i) for the GHG Biomass Deferral, effective on 7/1/2012 and submitted on 1/13/2013.
252:100–8–32.1	Ambient air increments and ceilings.	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–32.2	Exclusion from increment consumption.	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–32.3	Stack heights	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–33	Exemptions	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	SIP does not include OAC 252:100–8–33(c)(1)(C) effective on 7/1/2011 and submitted 2/6/2012.
252:100–8–34	Control technology review	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–35	Air quality impact evaluation	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	SIP does not include OAC 252:100–8–35(a)(2) effective on 7/1/2011 and submitted 2/6/2012.
252:100–8–35.1	Source information	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–35.2	Additional impact analyses	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–36	Source impacting Class I areas	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–36.2	Source obligation	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–37	Innovative control technology	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–38	Actuals PALs	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–39	Severability	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
	Part 9. Major Sources Affecting Nonattainment Areas			
252:100–8–50	Applicability	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–50.1	Incorporation by reference	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–51	Definitions	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–51.1	Emission reductions and offsets	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–52	Applicability determination for sources in attainment areas causing or contributing to NAAQS violations.	7/1/2011	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–53	Exemptions	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–54	Requirements for sources located in nonattainment areas.	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–54.1	Ozone and PM10 precursors	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–55	Source obligation	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–56	Actuals PALs	6/1/2009	9/28/2016, [Insert **Federal Register** citation].	
252:100–8–57	Severability	6/15/2006	9/28/2016, [Insert **Federal Register** citation].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * * * *				
Appendices for OAC 252: Chapter 100				
* * * * * * *				
252:100, Appendix P.	Regulated Air Pollutants	6/15/2007	9/28/2016, [Insert **Federal Register** citation].	
252:100, Appendix Q.	Incorporation by Reference	7/1/2012	9/28/2016, [Insert **Federal Register** citation].	
* * * * * * *				

§ 52.1929 [Amended]

■ 3. Section 52.1929 is amended by removing paragraph (c).

[FR Doc. 2016–23189 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0315; FRL–9952–72–Region 4]

Air Plan Approval; Georgia; Prong 4—2008 Ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$

Correction

In rule document 2016–22887 beginning on page 65899 in the issue of Monday, September 26, 2016, make the following correction:

On page 65899, in the second column, under the **DATES** heading, in the first through third lines of that paragraph, ” [insert date 30 days after date of publication in the **Federal Register**].” should read “October 26, 2016”.

[FR Doc. C1–2016–22887 Filed 9–27–16; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 15–199; FCC 16–113]

Railroad Police Officers To Access Public Safety Interoperability and Mutual Aid Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) provides railroad police officers access to the public safety interoperability channels. In this document, we amend our rules to permit railroad police officers to use public safety interoperability channels to communicate with public safety entities already authorized to use those channels. Specifically, we permit railroad police officers empowered to carry out law enforcement functions to use public safety interoperability channels in the VHF (150–174 MHz, and 220–222 MHz, UHF (450–470 MHz), 700 MHz narrowband (769–775/799–805 MHz)5 and 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) bands (806–809/851–854 MHz). Allowing railroad police officers to use these channels will promote interoperability, facilitate improved emergency response in railroad-related emergencies, and streamline access to these channels for emergency public safety communications.

DATES: Effective October 28, 2016, except for section 90.20(a)(2)(xiv) which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and effective date.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848 or *john.evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PS Docket No. 15–199, FCC 16–113, released on August 23, 2016. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

In the Report and Order we amend the Commission's rules to permit railroad police officers to use public safety interoperability channels to communicate with public safety entities already authorized to use those channels. Specifically, we permit railroad police officers empowered to carry out law enforcement functions to use public safety interoperability channels in the VHF (150–174 MHz, and 220–222 MHz, UHF (450–470 MHz), 700 MHz narrowband (769–775/799–805 MHz) and 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) bands (806–809/851–854 MHz). Allowing railroad police officers to use these channels will promote interoperability, facilitate improved emergency response in railroad-related emergencies, and streamline access to these channels for emergency public safety communications.

Procedural Matters

A. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules adopted in this Report and Order. The Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the

Report and Order and FRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

The Report and Order amends the Part 90 rules to facilitate railroad police access to public safety interoperability channels. Specifically, in response to a Petition for Rulemaking filed by the National Public Safety Telecommunications Council (NPSTC), the Commission issued a Notice of Proposed Rulemaking seeking comment on expanding eligibility to allow railroad police officers as defined by Federal Railroad Administration (FRA) to operate on public safety interoperability channels in the VHF, (including 220–222 MHz), UHF, 700 MHz narrowband and 800 MHz bands. Commenters were supportive of the NPRM proposals. Therefore, in light of the record, the Report and Order amends the Part 90 eligibility and licensing rules applicable to public safety interoperability spectrum.

As discussed in Sections D and E of this FRFA, the Commission has endeavored to keep the burdens associated with these rule changes as simple and minimal as possible. The Report and Order requires employers of railroad police officers to obtain authorization to operate on the 700 MHz interoperability channels as required by sections 90.523 and 90.525 of the Commission's rules and section 337(f)(1) of the Communications Act of 1934, as amended. Further, the Report and Order, requires employers of railroad police officers seeking to license the interoperability channels to obtain frequency coordination and submit a license application in order to operate base and control stations on interoperability channels. Additionally, the Report and Order adopts several alternatives to licensing fixed infrastructure on the interoperability channels in order to minimize the burden on railroad police and provide flexibility in achieving interoperability with public safety, as discussed in Section E of the FRFA. Finally, we update section 90.20 of the Commission's rules to explicitly identify the nationwide interoperability channels to facilitate interoperability among Federal, State, Local, Tribal and Railroad Police entities.

C. Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The official count of local governments in the United States for 2012 was 90,056, comprising 38,910 general-purpose governments and 51,146 special-purpose governments. General purpose governments include those classified as counties, municipalities, and townships. For this category, census data for 2012 show that there were approximately 37,132 counties, cities and towns that have populations of fewer than 50,000. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we describe and estimate the number of small entities that may be affected by the rules changes adopted in this Report and Order.

Private Land Mobile Radio Licensees. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. Because of the vast array of PLMR users, which includes railroads, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission, however, does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

Public Safety Radio Pool Licensees. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities may be eligible licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. According to the Commission's records, there were (1) 1,318 public safety licensees licensed on at least one of the VHF and UHF public safety interoperability channels; (2) 59 public safety licensees licensed on at least one of the narrowband interoperability channels in the public safety band between 764–776 MHz/794–806 MHz; and (3) 4,715 public safety licensees operating in the public safety band between 806–809/851–854 MHz (NPSPAC band). In total there are 6,092 public safety entities, including small governmental jurisdictions, licensed to operate on at least one of the interoperability channels.

Class I, Class II, and Class III Railroads. The Report and Order expands eligibility to operate on the interoperability channels to include railroad police employed by a Class I, II, or III railroad, Amtrak, the Alaska Railroad and passenger transit lines as defined by the Surface Transportation Board (STB). The SBA stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be and still be classified as a "small entity" is 1,500 employees for "Line-Haul" railroads, and 500 employees for "Short-Line" railroads. SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, the FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a "Class III railroad." This threshold is based on the s STB's threshold for a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. Consistent with FRA's approach, we are using this definition in this Report and Order. Approximately 700 railroads meet the criteria for small entity. We are using this as our estimate of the universe of small entities that could be directly impacted by the rule.

The Report and Order expands eligibility to permit railroad police officers as defined by the FRA to operate on the interoperability channels. The primary beneficiaries of this increased flexibility would be railroads, including small railroads, and PLMR licensees, including small governmental jurisdictions, that have a need to interoperate with each other. The FCC notes that the requirement that railroads obtain governmental authorization to operate on the 700 MHz interoperability channels is statutorily required and the Commission is without authority to exempt railroads from this requirement. Additionally, railroad entities may be required to obtain frequency coordination and submit a license application on FCC Form 601 in order to license, construct and operate base and control stations on the interoperability channels. The Report and Order provides additional flexibility that may reduce the impact on railroad police officers operating on the interoperability channels. Those alternatives are discussed in Section E.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Report and Order provides that railroad police officers who are certified and/or commissioned as a police officer under the laws of any state, in accordance with the regulations issued by the Secretary of the U.S. Department of Transportation and recognized by the Federal Railroad Administration (FRA) should be eligible to operate on the nationwide interoperability channels.

The Report and Order requires employers of railroad police officers to obtain governmental authorization to operate on the 700 MHz interoperability channels as required by sections 90.523 and 90.525 of the Commission's rules and section 337(f)(1) of the Communications Act of 1934, as amended. In accordance with the Paperwork Reduction Act, the Office of Management and Budget (OMB) has already approved the collection of state and local government certifications from non-governmental organizations that seek to operate on the 700 MHz narrowband channels. See ICR Reference Number: 201403–3060–018, OMB Control No. 3060–0805. We do not change the wording of the OMB-approved collection in any material or substantive manner. Only the number of respondents would change as we would expect that employers of railroad police officers will comply with these existing statutory requirements and regulations, which are the minimum necessary to ensure effective use of the spectrum and to minimize interference potential to public safety entities, including State, local and tribal governments. Thus, requiring railroad police to obtain governmental authorization in order to operate on the 700 MHz interoperability channels would increase the number of respondents by approximately 763 entities. See ICR Reference Number: 201308–2130–009, OMB Control No. 2130–0537.

The Report and Order permits the licensing of base and control stations on the interoperability channels. The licensing of base and control stations requires frequency coordination (*i.e.*), employers of railroad police would be required to submit a license application on Form 601 demonstrating evidence of frequency coordination). Similarly, mobile-only authorizations require frequency coordination and submission of FCC form 601. Railroad entities seeking licenses in the Industrial Land Transportation and Business Pool are required to obtain coordination from certain frequency coordinators specified in section 90.35 of the Commission's rules. However, the interoperability channels are subject to frequency coordination from the four certified public safety frequency coordinators specified in section 90.20(c). OMB has already approved the information collection requirements, including the frequency coordination requirement, associated with Form 601. See ICR Reference Number: 201311–3060–018, OMB Control No. 3060–0798. We do not make any substantive or material changes to the wording of the existing information collection. Instead, we amend the Part 90 eligibility rules to allow employers of railroad police officers to license the interoperability channels, thus increasing the number of respondents subject to the existing information collections by approximately 763 entities.

Additionally, the 700 MHz interoperability channels are administered by State entities and/or regional planning committees (RPC). OMB has already approved the information collections associated with obtaining State/RPC concurrence to operate on the 700 MHz interoperability channels. See ICR Reference Number: 201404–3060–023, OMB Control No. 3060–1198. We do not make any substantive or material changes to the wording of this existing information collection but we allow railroad police to operate on these interoperability channels, thus increasing the number of respondents subject to the existing information collections by approximately 763 entities.

The Report and Order adopts less burdensome alternatives to licensing, constructing and operating base stations and control stations on the interoperability channels. Specifically, the Report and Order allows railroad police officers to (1) operate mobile and portable stations on these channels under a "blanket" licensing approach; (2) allows public safety licensees to share their facilities with railroad police pursuant to a sharing agreement under section 90.179 of the Commission's Rules; and (3) permits railroad police officers to operate mobile stations under a public safety licensee's authorization pursuant to section 90.421, and therefore would not impose any new or modified information collections requirements. However, allowing public safety entities to "share" their facilities with railroad police would require reducing such an arrangement into writing as required by section 90.179. OMB has already approved the information collection requirements in section 90.179 and we do not make any substantive or material changes to the wording of the existing information collection. See ICR Reference Number: 200111–3060–016, OMB Control No. 3060–0262. Thus, the number of respondents would increase by approximately 763 entities.

The Commission believes that applying the same information collection rules equally to public safety and railroad police entities in this context will promote interoperability and advance Congressional objectives. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The rule revisions the Commission adopts benefit public safety and railroad police entities by giving them more flexibility, and more options for gaining access to interoperability spectrum.

However, in the interest of ensuring railroad police coordinate with state and local public safety entities, we require railroad police to obtain concurrence from the relevant state or state-designated interoperability coordinator before operating mobiles or portables on the VHF, (including 220–222 MHz), UHF, 700 MHz narrowband interoperability and 800 MHz mutual aid channels. Employers of railroad police officers shall execute a memorandum of understanding with the state interoperability coordinator. Similarly, we require employers of railroad police officers seeking to license the below-470 MHz interoperability channels to obtain concurrence from the relevant state interoperability coordinator. To facilitate interoperability coordination in the bands below 470 MHz, we provide states the option of administering the below-470 MHz interoperability channels. States may delegate the administration of the below-470 MHz interoperability channels to the existing 700 MHz and 800 MHz Regional Planning Committees.

Finally, the rule amendment proposed relative to section 90.20(i) has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities. We have evaluated our rule changes in this Report and Order in the context of small business entities and find no alternatives, to the benefit of small entities, that would achieve our goals of facilitating interoperability between public safety entities and railroad police officers and efficient use of nationwide interoperability spectrum. Additionally, the rules adopted in this Report and Order are deregulatory in nature and consistent with Federal railroad interoperability mandates. Accordingly, the rule changes minimize any significant economic impact on small entities.

The Report and Order provides railroad police four alternatives that minimize the impact on small entities, including small railroads. First, the Report and Order permits "blanket licensing", an approach that allows railroad police officers to operate on the interoperability channels provided their railroad employer already holds a license for PLMR spectrum and subject to coordination with the relevant state interoperability coordinator. Second, the Report and Order permits issuing mobile-only licenses that allow railroad police officers to operate mobiles on the interoperability channels without having to construct and operate base and control stations. Third, the Report and Order clarifies that section 90.421 of the Commission's rules allows railroad police officers to operate mobiles under the license of public safety licensees. Fourth, the Report and Order clarifies that section 90.179 of the Commission's rules permits public safety entities to "share" their facilities with railroad police. No significant alternative was presented in the comments.

Finally, the Report and Order amends section 90.20 of the Commission's rules to explicitly identify the nationwide interoperability channels *i.e.* the VHF (including 220–222 MHz), UHF and 700 MHz narrowband, and on the 800 MHz mutual aid channels. We believe that flexible licensing policies are necessary to encourage the use of the most spectrally efficient technology to meet user-defined needs. Recognizing the budgetary constraints that small public safety entities face, we provide railroad police officers and public safety a flexible licensing approach to facilitate interoperability.

F. Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

G. Paperwork Reduction Act of 1995 Analysis

This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this present document, we have assessed the effects of expanding railroad police eligibility to access the interoperability channels (*i.e.* (1) revising the number of respondents subject to certain existing information collection requirements and (2) requiring employers of railroad police officers to enter into memorandum of understanding with state interoperability coordinators), and find that businesses with fewer than 25 employees will not be unduly burdened.

H. Congressional Review Act

The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 4(j), 301, 303, 316, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, 316, and 337, that this Report and Order is hereby *adopted.*

It is further ordered that part 90 of the Commission's rules, 47 CFR part 90, *is amended,* effective October 28, 2016, except that those amendments which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

It is further ordered that the Final Regulatory Flexibility Analysis *is adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 90

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.20 is amended by adding paragraphs (a)(2)(xiv) and (i) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(a) * * *

(2) * * *

(xiv)(A) Railroad police officers are a class of users eligible to operate on the nationwide interoperability and mutual aid channels listed in 90.20(i) provided their employer holds a Private Land Mobile Radio (PLMR) license of any radio category, including Industrial/Business (I/B). Eligible users include full and part time railroad police officers, Amtrak employees who qualify as railroad police officers under this subsection, Alaska Railroad employees who qualify as railroad police officers under this subsection, freight railroad employees who qualify as railroad police officers under this subsection, and passenger transit lines police officers who qualify as railroad police officers under this subsection. Railroads and railroad police departments may obtain licenses for the nationwide interoperability and mutual aid channels on behalf of railroad police officers in their employ. Employers of railroad police officers must obtain concurrence from the relevant state interoperability coordinator or regional planning committee before applying for a license to the Federal Communications Commission or operating on the interoperability and mutual aid channels.

(*1*) Railroad police officer means a peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed, full or part time, by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(*2*) Commissioned means that a state official has certified or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(*3*) Property means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

(*4*) Railroad means each class of freight railroad (*i.e.* Class I, II, III); Amtrak, Alaska Railroad, commuter railroads and passenger transit lines.

(*5*) The word state, as used herein, encompasses states, territories and the District of Columbia.

(B) Eligibility for licensing on the 700 MHz narrowband interoperability channels is restricted to entities that have as their sole or principal purpose the provision of public safety services.

* * * * *

(i) *Nationwide interoperability channels.* The nationwide interoperability and mutual aid channels are listed below for the VHF, (including 220–222 MHz), UHF, 700 MHz and 800 MHz bands. (See §§ 90.20(d)(80), 90.531(b)(1), 90.617(a)(1) and 90.720). Any Part 90 public safety eligible entity holding a Part 90 license may operate hand-held and vehicular mobile units on these channels without needing a separate authorization. Base stations or control stations operating on these channels must be licensed separately: Encryption may not be used on any of the interoperability or mutual aid calling channels.

VHF interoperability channel (MHz)	Purpose
151.1375 MHz (base/mobile)	Tactical.
154.4525 MHz (base/mobile)	Tactical.
155.7525 MHz (base/mobile)	Calling.
158.7375 MHz (base/mobile)	Tactical.
159.4725 MHz (base/mobile)	Tactical.

VHF mutual aid channel (MHz)	Purpose
220.8025 MHz (base/mobile)	Tactical.
220.8075 MHz (base/mobile)	Tactical.
220.8125 MHz (base/mobile)	Tactical.
220.8175 MHz (base/mobile)	Tactical.
220.8225 MHz (base/mobile)	Tactical.
220.8275 MHz (base/mobile)	Tactical.
220.8325 MHz (base/mobile)	Tactical.
220.8375 MHz (base/mobile)	Tactical.
220.8425 MHz (base/mobile)	Tactical.
220.8475 MHz (base/mobile)	Tactical.

UHF interoperability channel (MHz)	Purpose
453.2125 MHz (base/mobile)	Calling.
458.2125 MHz (mobile).	
453.4625 MHz (base/mobile)	Tactical.
458.4625 MHz (mobile).	
453.7125 MHz (base/mobile)	Tactical.
458.7125 MHz (mobile).	

UHF interoperability channel (MHz)	Purpose
453.8625 MHz (base/mobile) 458.8625 MHz (mobile).	Tactical.

700 MHz interoperability channel (MHz)	Purpose
769.14375 MHz (base/mobile) 799.14375 MHz (mobile).	Tactical.
769.24375 MHz (base/mobile) 799.24375 MHz (mobile).	Calling.
769.39375 MHz (base/mobile) 769.39375 MHz (mobile).	Tactical.
769.49375 MHz (base/mobile) 799.49375 MHz (mobile).	Tactical.
769.64375 MHz (base/mobile) 799.64375 MHz (mobile).	Tactical.
769.74375 MHz (base/mobile) 799.74375 MHz (mobile).	Tactical.
769.99375 MHz (base/mobile) 799.99375 MHz (mobile).	Tactical.
770.14375 MHz (base/mobile) 800.14375 MHz (mobile).	Tactical.
770.24375 MHz (base/mobile) 800.24375 MHz (mobile).	Tactical.
770.39375 MHz (base/mobile) 800.39375 MHz (mobile).	Tactical.
770.49375 MHz (base/mobile) 800.49375 MHz (mobile).	Tactical.
770.64375 MHz (base/mobile) 800.64375 MHz (mobile).	Tactical.
770.89375 MHz (base/mobile) 800.89375 MHz (mobile).	Tactical.
770.99375 MHz (base/mobile) 800.99375 MHz (mobile).	Tactical.
773.00625 MHz (base/mobile) 803.00625 MHz (mobile).	Tactical.
773.10625 MHz (base/mobile) 803.10625 MHz (mobile).	Tactical.
773.25625 MHz (base/mobile) 803.25625 MHz (mobile).	Calling.
773.35625 MHz (base/mobile) 803.35625 MHz (mobile).	Tactical.
773.50625 MHz (base/mobile) 803.50625 MHz (mobile).	Tactical.
773.60625 MHz (base/mobile) 803.60625 MHz (mobile).	Tactical.
773.75625 MHz (base/mobile) 803.75625 MHz (mobile).	Tactical.
773.85625 MHz (base/mobile) 803.85625 MHz (mobile).	Tactical.
774.00625 MHz (base/mobile) 804.00625 MHz (mobile).	Tactical.
774.10625 MHz (base/mobile) 804.10625 MHz (mobile).	Tactical.
774.25625 MHz (base/mobile) 804.25625 MHz (mobile).	Tactical.
774.35625 MHz (base/mobile) 804.35625 MHz (mobile).	Tactical.
774.50625 MHz (base/mobile) 804.50625 MHz (mobile).	Tactical.
774.60625 MHz (base/mobile) 804.60625 MHz (mobile).	Tactical.
774.85625 MHz (base/mobile) 804.85625 MHz (mobile).	Tactical.

800 MHz mutual aid channel (MHz)	Purpose
851.0125 MHz (base/mobile) 806.0125 MHz (mobile).	Calling.
851.5125 MHz (base/mobile) 806.5125 MHz (mobile).	Tactical.

800 MHz mutual aid channel (MHz)	Purpose
852.0125 MHz (base/mobile) 807.0125 MHz (mobile).	Tactical.
852.5125 MHz (base/mobile) 807.0125 MHz (mobile).	Tactical.
853.0125 MHz (base/mobile) 808.0125 MHz (mobile).	Tactical.

■ 3. Section 90.720 is amended by revising paragraph (a) introductory text, and paragraphs (a)(2) and (b) to read as follows:

§ 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees who meet the eligibility criteria of §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) or 90.20(a)(2)(xiv) are authorized by this rule to use mobile and/or portable units on Channels 161–170 throughout the United States, its territories, and the District of Columbia to transmit:

* * * * *

(2) Communications to facilitate interoperability among entities eligible under §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) and 90.20(a)(2)(xiv); or

* * * * *

(b) Any Government entity and any non-Government entity eligible to obtain a license under §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) or 90.20(a)(2)(xiv) is also eligible to obtain a license for base/mobile operations on Channels 161 through 170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability among the above-specified entities, may only be conducted on a secondary non-interference basis to such communications.

[FR Doc. 2016–23206 Filed 9–27–16; 8:45 am]

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Proposed Rules

Federal Register
Vol. 81, No. 188
Wednesday, September 28, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA85

Federal Home Loan Bank Membership for Non-Federally-Insured Credit Unions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is proposing to amend its regulations governing Federal Home Loan Bank (Bank) membership to implement section 82001 of the Fixing America's Surface Transportation Act, which amended section 4(a) of the Federal Home Loan Bank Act (Bank Act) to authorize certain credit unions without Federal share insurance to become Bank members. This proposed rule also would make appropriate conforming changes to FHFA's membership regulations.

DATES: Written comments must be received on or before November 28, 2016.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 2590–AA85, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include Comments/RIN 2590–AA85 in the subject line of the message.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA85, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA85, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Associate General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Julie Paller, Senior Financial Analyst, Division of Bank Regulation, *Julie.Paller@fhfa.gov,* (202) 649–3201 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available without change for public inspection on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

Under the Bank Act, federally insured depository institutions, including state- and federally chartered credit unions whose member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF), have been eligible for Bank membership since 1989. Until recently, however, state-chartered credit unions without Federal share insurance were ineligible for Bank membership, except to the limited extent that a credit union certified as a "community development financial institution" (CDFI) could meet the eligibility requirements applicable to CDFIs. In December 2015, Congress amended the Bank Act to authorize the Banks to consider applications for membership from state-chartered credit unions without Federal share insurance and to approve such applicants for Bank membership (irrespective of their CDFI status), provided that certain prerequisites have been met.[1] This proposed rule would implement those statutory amendments.

A. Amendment of the Bank Act To Authorize Membership for Non-Federally-Insured Credit Unions

Section 4 of the Bank Act specifies the types of institutions that may be eligible for membership in one of the eleven district Banks and establishes requirements that each of those types of institutions must meet in order to be eligible for Bank membership.[1] When enacted as part of the original Bank Act in 1932, section 4 authorized thrift institutions of various types, as well as insurance companies, to become Bank members, provided that the institution met the applicable eligibility requirements. At that time and for many decades afterward, the statute did not permit credit unions to become Bank members. This changed in 1989, when Congress amended section 4 to add "insured depository institution[s]" to the list of entities that may be eligible for Bank membership and defined that term to include any depository institution the accounts of which are insured by the Federal Deposit Insurance Corporation (FDIC) or by the NCUSIF.[2] In effect, those amendments authorized federally insured commercial banks and credit unions to become Bank members for the first time. Commercial banks without Federal deposit insurance and credit unions without Federal share insurance remained ineligible for Bank membership even after the 1989 amendments.

In 2008, Congress amended the Bank Act to authorize entities certified as CDFIs by the CFDI Fund of the United

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[1] Fixing America's Surface Transportation Act (FAST), Public Law 114–94, section 82001(a), 129 Stat. 1795 (2015), codified at 12 U.S.C. 1424(a)(5)(A) and (B).

[1] *See* 12 U.S.C. 1424.

[2] *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, section 704, 103 Stat. 183, 415 (1989).

States Department of the Treasury to become Bank members, provided the CDFI meets the membership eligibility requirements established for such entities. By law, credit unions—including state-chartered credit unions without Federal share insurance—may be certified as CDFIs.[3] Thus, since the adoption of the 2008 statutory amendments, a credit union that would otherwise have been ineligible for Bank membership due to a lack of Federal share insurance may nonetheless be eligible for membership if it is certified as a CDFI and meets the eligibility requirements applicable to CDFIs.

To implement those statutory amendments, FHFA in January 2010 adopted amendments to part 1263 to address membership eligibility and application requirements for CDFIs and to clarify the types of entities to be treated as CDFIs for membership purposes.[4] That rule defined "CDFI" to mean any entity that the CDFI Fund has certified as a community development financial institution, with the exception of federally insured banks, thrifts, and credit unions.[5] As insured depository institutions under the Bank Act, the latter types of entities had already been eligible for Bank membership prior to the enactment of the statutory provisions authorizing membership for CDFIs. By excluding federally insured depositories from the definition of "CDFI," FHFA effectively required that they continue to be treated solely as insured depository institutions under the membership regulation, even in cases where the institution has been certified as a CDFI. In explaining its decision, the Agency cited its conclusion that, while Congress adopted the 2008 amendments to provide a new avenue to membership for CDFIs that had not previously been eligible, it did not intend to provide an additional avenue to membership for federally insured depository institutions that had already been eligible under the prior law.[6]

While it effectively required that a federally insured credit union certified as a CDFI be treated as an insured depository institution for Bank membership purposes, the 2010 rule mandated different treatment for state-chartered credit unions without Federal share insurance that have been certified as a CDFI—a type of entity that the rule termed a "CDFI credit union." As amended by the 2010 rule, the membership regulation treats CDFI credit unions as a type of CDFI and generally subjects them to the same standards that apply to non-depository CDFIs, with the exception of those that must be met in order for an applicant to be deemed in compliance with the statutory eligibility requirement that an institution's financial condition be "such that advances may be safely made to it."[7] With respect to the latter requirement, the regulation requires that CDFI credit unions demonstrate compliance in a manner similar to that which had already been required of all other types of depository institution applicants prior to the 2010 rulemaking.[8] For non-depository CDFIs, such as loan funds and venture capital funds, the 2010 final rule established separate financial condition requirements that were tailored to the unique structure and business of those entities.[9]

In December 2015, Congress again amended section 4 of the Bank Act, in this case to permit state-chartered credit unions without Federal share insurance to be approved for Bank membership (irrespective of their CDFI status) where the credit union meets the membership eligibility requirements applicable to insured depository institutions and has taken enumerated steps to demonstrate that it meets the requirements for Federal share insurance, notwithstanding that it is not actually federally insured.[10] Specifically, new section 4(a)(5) states that a credit union lacking Federal share insurance that has applied to become a member of a Bank shall be treated as an insured depository institution for purposes of determining its eligibility for Bank membership, provided that its state credit union regulator has first determined that the institution met the requirements for Federal share insurance as of the date of its application for membership.[11] However, the new provision also provides that if the state regulator for such an applicant fails to make a determination as to whether the applicant met the requirements for Federal share insurance before the expiration of the six-month period that begins on the date of its application for membership, then the credit union applicant shall be deemed to have met those requirements.[12]

Consistent with the regulatory definitions that would be in effect under the proposed rule, this Supplementary Information refers to credit unions without Federal share insurance that are not certified as CDFIs as "non-federally-insured credit unions" or "NFICUs" and to credit unions without Federal share insurance that are certified as CDFIs as "CDFI credit unions." As discussed below, under the proposed rule, CDFI credit unions would continue to be treated as they are under the existing regulation and would not be subject to the new regulatory provisions governing NFICUs.

B. Letters to Banks Providing Guidance on the Treatment of NFICUs Under the 2015 Statutory Amendments

On April 12, 2016, in response to requests from several Banks for guidance addressing the manner in which they may accept and process membership applications from NFICUs that are newly eligible under the recent statutory amendments, FHFA sent a letter to each Bank describing how it should comply with the new statutory provisions. The guidance letters addressed the substantive requirements of the statutory amendments, the procedures each Bank should follow in processing applications, and the actions the Bank should take to document compliance with the new eligibility requirements. The letters also noted the Agency's intent to initiate a rulemaking to codify the substance of the guidance and advised each Bank to process membership applications from NFICUs in accordance with the guidance until FHFA adopts a final rule implementing the new statutory provisions.

The amended statute provides that an NFICU may be eligible for Bank membership only if its state regulator has determined that it meets all the requirements for Federal share insurance "as of the date of the application for membership."[13] With respect to the nature of this determination, the guidance letters expressed FHFA's view that the statute requires that the state regulator of an NFICU applicant determine that the applicant actually satisfies all of the applicable eligibility requirements for NCUSIF share insurance under the Federal Credit Union Act[14] and the implementing regulations of the NCUA.[15] In response to specific questions FHFA had received, the guidance clarified that a determination by a state regulator that a particular NFICU applicant is "eligible to apply" for NCUA insurance or is operating and in good standing under state law is not sufficient to satisfy the statutory requirement.

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[3] *See* 12 U.S.C. 4701–4719; 12 CFR part 1805.

[4] 75 FR 678 (Jan. 5, 2010).

[5] *See* 12 CFR 1263.1.

[6] 75 FR at 681.

[7] *See* 12 U.S.C. 1424(a)(2)(B).

[8] *See* 12 CFR 1263.11(b).

[9] *See* 12 CFR 1263.16(b).

[10] Public Law 114–94, section 82001(a), 129 Stat. 1795 (2015).

[11] 12 U.S.C. 1424(a)(5). Although the statutory text actually refers several times to "Federal deposit insurance," FHFA construes those references to mean the federal share insurance that is provided to credit unions by the NCUSIF, in light of the evident purpose for which Congress adopted the NFICU amendments.

[12] 12 U.S.C. 1424(a)(5)(B)(ii).

[13] 12 U.S.C. 1424(a)(5)(B)(i).

[14] 12 U.S.C. 1751 *et seq.*

[15] 12 CFR part 745.

The guidance also addressed the meaning of the term "date of the application for membership," which Congress designated as the date as of which the state regulator is to determine whether an NFICU meets the eligibility requirements for Federal share insurance and on which begins the statutory six-month period after which an NFICU shall be deemed to meet those requirements if its state regulator fails to act. Because Congress did not specify precisely what constitutes the "date of the application," FHFA construed the term consistently with similar language in the existing membership regulation. The guidance explained that the "date of the application" should be the date on which an NFICU has provided to a Bank a "complete" membership application—*i.e.*, an application that includes all information that is required to assess the applicant's compliance with the applicable statutory and regulatory membership eligibility requirements, as well as any other information the Bank deems necessary to act on an application. The existing membership regulation uses this concept of a "complete" application to establish the starting point of the 60-day period during which a Bank is generally required to make a determination on a membership application.[16]

The guidance stated that a Bank generally should process a membership application from an NFICU in the same manner it would process a membership application from a federally insured credit union, up to the point when the Bank determines that the NFICU has provided all information required to assess its compliance with the applicable membership eligibility requirements. The existing membership regulation requires that, once a Bank makes such a determination with respect to the application of a federally insured credit union (or that of any other type of applicant), it must inform the applicant that the application is "complete" and generally must act on the application within 60 days. The guidance, however, advised that, when a Bank has made such a determination with respect to the application of an NFICU, the Bank should instead inform the NFICU that its application is "provisionally complete" and that it must take further steps before the application may be deemed fully complete and ready to be acted upon. Under the guidance, a Bank is to regard an NFICU's application to be only "provisionally" complete at that point because it would not include the documentation that the NFICU's state regulator either has determined that the applicant satisfied the requirements for Federal share insurance as of the date of the application or has failed to make that determination within six months. The guidance advised that, when informing an NFICU applicant that its application is provisionally complete, a Bank should instruct it to make a written request of its state regulator for a determination that the NFICU satisfied all of the eligibility requirements for Federal share insurance as of the date of that request, and to provide a copy of that request to the Bank on the same day it transmits the request to the regulator.[17]

With respect to the completion of the membership application, the guidance advised that a Bank should act on an NFICU's application only after having received one of the following three items: (1) An affirmative written response from the regulator that the NFICU meets the eligibility requirements for Federal share insurance; (2) a written statement from the regulator that it cannot or will not make any determination regarding the NFICU's eligibility for Federal share insurance; or (3) a written statement from the NFICU applicant that six months have expired from the date of the membership application without the state regulator providing any response to the NFICU's request. Items (1) and (3) above closely track the statutory requirements. Regarding item (2), FHFA concluded that, although the statute does not address the possibility that a state regulator may expressly decline to make a determination (as opposed to merely failing to respond to a request), it is permissible to consider such a written statement as the substantive equivalent of a failure to respond within six months. The Agency noted that the statutory six-month review period appeared to be intended to ensure that a state credit union regulator would have a sufficient amount of time to determine whether a particular credit union satisfied the requirements for Federal share insurance. The guidance reflected FHFA's belief that, in the event that a state regulator were to conclude that it could not make such a determination for any credit union due to a lack of familiarity with the NCUA underwriting process or for other reasons, receipt of a written statement to that effect will suffice to allow a Bank to approve an NFICU's membership application without waiting for the six-month period to expire.[18] The guidance advised the Banks to retain in each NFICU applicant's membership file copies of the relevant documents, including the applicant's request to its state regulator and any response from the regulator or statement from the applicant that the regulator had not responded, as part of its required records for all membership applications.

Finally, the guidance letters addressed the possibility that an existing Bank member that is a state-chartered federally insured credit union might voluntarily cancel its Federal share insurance, thus becoming an NFICU—a scenario that the new statutory provisions do not explicitly address. The guidance made clear that such a credit union may voluntarily surrender its Federal share insurance without jeopardizing its status as a Bank member and without having to request from its state regulator the type of determination that the statute requires to be made with respect to NFICU applicants. The guidance letters reasoned that NCUA's prior approval of the credit union for Federal share insurance is dispositive as to the key issue under the statutory amendments—*i.e.*, whether the institution satisfies the eligibility requirements for Federal share insurance—thus obviating any need for the member's state regulator to make that same decision.

III. The Proposed Rule

The proposed rule would codify into part 1263 of FHFA's regulations the core concepts of the guidance letters. The principal regulatory provisions regarding NFICUs would be located in a new § 1263.19 (a reserved section number under the existing regulation), which would set forth the prerequisites that an NFICU must meet in order to be treated as an insured depository institution for purposes of determining its eligibility for membership. As described in more detail below, the proposed rule would also make a number of conforming revisions to other sections of the regulation.

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[16] *See* 12 CFR 1263.3(c).

[17] The guidance letters also included an example of a statement that an applicant could include in the request to its supervisor, which was intended to provide clarity as to the required nature of the request. The letters also noted that, in the event that a state supervisor were unable or unwilling to provide an affirmative response to the NFICU, then the applicant may ask the supervisor to provide a written statement to that effect.

[18] FHFA is aware of one instance in which a state credit union regulator has advised a Bank that it could not make a determination regarding a state credit union's eligibility for federal share insurance because the state regulator was not familiar with the specific underwriting and related processes employed by NCUA when acting on applications for federal share insurance.

A. Primary Revisions

1. Definitions of NFICU and Insured Depository Institution—§ 1263.1

The proposed rule would define "non-federally-insured credit union" to mean a "State-chartered credit union that does not have Federal share insurance and that has not been certified as a CDFI by the CDFI Fund." The proposed rule would not include CDFI credit unions within this definition, notwithstanding that they are also state-chartered credit unions that do not have Federal share insurance. The existing regulation generally requires CDFI credit unions to comply with the membership eligibility requirements that are applicable to CDFIs generally, rather than those applicable to depository institutions, with the exception of provisions relating to the applicant's financial condition. The proposed rule would make no substantive changes to any of the provisions that currently apply to CDFI credit unions and would treat them separately from NFICUs for membership purposes.

The definition of "insured depository institution" in the existing membership regulation follows the Bank Act definition of that term and includes any federally insured bank, savings association, or credit union. The proposed rule would revise the regulatory definition of "insured depository institution" to include, in addition to federally insured depository institutions, NFICUs meeting the prerequisites of proposed § 1263.19. As an "insured depository institution" under the revised regulation, any qualifying NFICU applying for Bank membership would be subject to all of the provisions of the membership regulation that apply to insured depository institutions generally, except where otherwise provided. Thus, a qualifying NFICU applicant would be eligible for membership only if: It is duly organized under Federal or State law; it is subject to inspection and regulation under Federal or State banking laws, or similar laws; it makes long-term home mortgage loans; its financial condition is such that advances may be safely made to it (hereinafter the "financial condition" requirement); its management and its home financing policy are both consistent with sound and economical home financing;[19] and it has at least 10 percent of its assets in "residential mortgage loans" (hereinafter the "10 percent" requirement).[20] With the exception of the financial condition requirement, an NFICU applicant would be required to demonstrate compliance with each of those eligibility requirements in the same manner that is required of insured depository institutions generally. As discussed below, the proposed rule would require an NFICU applicant to demonstrate compliance with the financial condition requirement in the same manner as a CDFI credit union.[21]

2. Prerequisites for an NFICU To Be Treated as an Insured Depository Institution—§ 1263.19

The proposed rule would add to the membership regulation a new § 1263.19, which would set forth the prerequisites that an NFICU must meet in order to be treated as an insured depository institution for purposes of determining its eligibility for membership. The substantive and procedural requirements set forth in proposed § 1263.19 are, in all material respects, identical to those set forth in the guidance letters, although the proposed rule would provide additional clarification on certain points. As described below, paragraph (a) of the new section would address the treatment of NFICUs that are applying for Bank membership, while paragraph (b) would address the status of any credit union that already is a Bank member but that opts to become an NFICU by canceling its Federal share insurance.

NFICUs Applying for Bank Membership

Section 126319(a) addresses the prerequisites that must be met before a Bank may approve an NFICU applicant for membership. In parallel with the inclusion of qualifying NFICUs within the regulatory definition of "insured depository institution," the introductory clause to this provision provides that an NFICU applicant shall be treated as an insured depository institution for purposes of determining its eligibility for membership, provided that it complies with all of the requirements of § 1263.19(a).

The proposed rule would first require that a Bank obtain from an NFICU applicant all of the information that the Bank generally requires to process membership applications from federally insured depository institutions, including all of the information needed to demonstrate compliance with the eligibility requirements described above. Once a Bank has obtained that information, the rule would require that the Bank notify the NFICU that its application is provisionally complete and that the NFICU should request from its state regulator a determination that it satisfies the requirements for obtaining Federal share insurance as of the date of the request.[22] The notice must also inform the NFICU that its application will not be deemed to be complete until the Bank has received acceptable documentation pertaining to the regulator's response to the NFICU applicant's request.

Proposed § 1263.19(a)(3) would require a Bank to deem an NFICU's application to be complete after it has received any one of the following items: (1) A written statement from the regulator confirming that the NFICU satisfies the requirements for Federal share insurance; (2) a written statement from the regulator that it is unable to make that determination; or (3) a written statement from the NFICU that it has not received a response from the state regulator within the statutory six-month period, and that the regulator has not determined that the NFICU does not meet the requirements for Federal share insurance. Once a Bank has received one of those three items and has deemed the NFICU's application to be complete, the proposed rule would require that the Bank act upon the application in accordance with § 1263.3(c). That existing provision requires that a Bank notify an applicant when it deems the application to be complete and (with certain exceptions) either approve or deny the application within 60 calendar days of the date it made that determination.[23] The cross-reference to

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[19] 12 CFR 1263.6(a).

[20] 12 CFR 1263.6(b). The Bank Act exempts certain smaller depository institutions—"community financial institutions" (CFIs)—from the 10 percent requirement, but defines CFI to include only institutions the deposits of which are insured under the Federal Deposit Insurance Act (FDIA) that have total assets below a certain threshold amount. 12 U.S.C. 1422(10)A)(i), 1424(a)(4). Because a credit union cannot obtain deposit insurance under the FDIA, it cannot qualify as a CFI regardless of its level of total assets.

[21] *See* 12 CFR 1263.11(b).

[22] The NFICU must simultaneously provide to the Bank a copy of its request to the state regulator. The guidance letters had included an example of language that an NFICU could use in its request to its state regulator, but the proposed rule would not do so. A number of NFICUs have since been admitted to membership, and appear to have encountered no difficulties in obtaining a response from the state regulators, which suggests that there is no need for the regulation to address this topic. Banks may continue to use the sample language if they choose to do so.

[23] The regulation allows a Bank to suspend the 60-day review period if it subsequently determines that it does not in fact have all of the information

§ 1263.3(c) is intended to make clear that a Bank would be permitted the same amount of time to act upon a fully complete NFICU application as it has to act upon a complete application from any other type of eligible institution. However, given that an NFICU's application should already include all of the information needed to determine whether it meets the applicable membership eligibility requirements at the time it sends the request to its regulator, FHFA anticipates that in many cases Banks would be prepared to act upon an NFICU application shortly after receiving the required documentation regarding the response of the state regulator, especially when the regulator fails to respond within six months or does not provide a response until the end of that timeframe.

A Credit Union That Becomes an NFICU When Already a Member

While proposed § 1263.19(a) addresses the treatment of NFICUs applying to become a Bank member, § 1263.19(b) addresses the status of any existing credit union Bank member that opts to become an NFICU by canceling its Federal share insurance. The guidance letters made clear that any such credit union may voluntarily surrender its Federal share insurance without affecting its status as a Bank member. Consistent with that position, proposed § 1263.19(b) would explicitly authorize such a credit union to remain a member without requiring it to request a determination of its state regulator as to whether it meets the requirements for Federal share insurance. The proposed rule would require that the Bank determine that the member has canceled its Federal share insurance voluntarily—*i.e.,* that NCUA has approved the credit union's request to terminate its Federal share insurance.[24] The Banks could make this determination by obtaining a copy of NCUA's approval of the credit union's request to terminate its Federal insurance. Upon converting to an NFICU, the credit union would remain subject to all regulatory provisions that apply to insured depository institution members.

The recent statutory amendments focus on state-chartered credit unions that have not previously been eligible for Bank membership due to their lack of Federal share insurance; the amendments do not address whether all of the requirements that apply to NFICU applicants should also apply to existing Bank members that wish to surrender their Federal share insurance while remaining as members. As FHFA noted in the guidance letters, the key question with respect to whether any particular NFICU may be eligible for Bank membership under the statutory amendments is whether the institution actually meets all of the requirements for Federal share insurance. In the case of an existing Bank member that is a federally insured state-chartered credit union, NCUA has already definitively answered that question by having previously approved the credit union for Federal share insurance and having continued to provide that insurance up until the time the credit union voluntarily canceled it. For that reason, nothing would be gained by construing the statute as requiring existing credit union Bank members that voluntarily cancel their Federal share insurance to seek that same determination from their state regulators in order to remain a member as an NFICU.

Requiring a Bank to confirm that the cancelation of a member's Federal share insurance was voluntary would provide reasonable assurance that the member satisfies the requirements for Federal share insurance and, thus, remains eligible for membership as an NFICU despite no longer being a federally insured depository institution. As noted above, the core requirement for NFICUs under the statutory amendments is a determination that the NFICU satisfies the requirements for Federal share insurance, and the best evidence that a newly converted NFICU satisfies those requirements would be that it had remained federally insured until voluntarily relinquishing the insurance. It is also possible, however, that a federally insured credit union could lose its Federal share insurance through an involuntary termination for cause by NCUA. If NCUA were to terminate a Bank member's share insurance involuntarily, then that institution would cease to be eligible for Bank membership because NCUA's action would demonstrate that the institution could not meet the prerequisites for membership as an NFICU and, without Federal share insurance, it would no longer be eligible for membership as a federally insured depository institution. In such a case, a Bank likely would be required to terminate the credit union's membership because, unless the credit union happened to be certified as a CDFI, it would no longer satisfy any of the provisions under which credit unions may eligible for membership.

B. Conforming Amendments

The proposed rule would also make a number of conforming revisions to part 1263, which are discussed below.

1. Definitions—§ 1263.1

In addition to the substantive revisions to § 1263.1 that are discussed above, the proposed rule would make a number of non-substantive revisions to that section. First, the rule would add a definition of "Federal share insurance" and define that term to mean "insurance coverage of credit union member accounts provided by the National Credit Union Share Insurance Fund under title II of the Federal Credit Union Act (12 U.S.C. 1781 *et seq.*)."

The rule would also revise the definition of "CDFI credit union," which is currently defined to mean "a State-chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have Federal share insurance," to reverse the order of the two clauses so that it would instead refer to "a State-chartered credit union that does not have Federal share insurance and that has been certified as a CDFI by the CDFI Fund." FHFA is proposing to make this minor change so that the definition of "CDFI credit union" will be structured in parallel with the definition of "non-federally-insured credit union." The intent of this is to make clear that the amended regulation would address two types of state-chartered credit unions without Federal share insurance—those that are not certified as a CDFI (non-federally-insured credit unions) and those that are certified as a CDFI (CDFI credit unions)—and would subject them to different membership requirements.

In the definition of "community development financial institution or CDFI," the proposed rule would revise the reference to "a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*)" to refer instead to "a credit union that has Federal share insurance." FHFA is proposing this minor non-substantive change so that the terminology used in the definition of "CDFI" will be consistent with that in the proposed definitions of "non-federally-insured credit union" and "CDFI credit union," both of which would employ the newly-defined term "Federal share insurance" to refer to insurance obtained under the Federal Credit Union Act.

Finally, the proposed rule would revise the definition of "regulatory financial report," which currently refers

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that is required to process the application. In such cases, a Bank may require that the applicant provide additional information, but must resume the 60-day review period when the applicant supplies the requested information. 12 CFR 1263.3(c).

[24] *See* 12 U.S.C. 1786(a) (voluntary termination of federal share insurance); 12 CFR 708b.201(d) (termination of federal share insurance requires prior approval of NCUA).

to a financial report that an "applicant" is required to file with its regulator, to refer instead to a financial report that an "institution" is required to file with its regulator. In addition to requiring a Bank to obtain information from applicants' regulatory financial reports for many purposes, FHFA's regulations also require that a Bank obtain information from members' regulatory financial reports in some circumstances. The proposed revision would make clear that the term "regulatory financial report" refers to the reports of both applicants and members.

2. Membership Application Requirements—§ 1263.2

Section 1263.2(b) of the existing regulation requires a Bank to prepare for each applicant a written membership application digest addressing whether or not the applicant meets each of the applicable requirements for membership under the regulation. The proposed rule would revise that provision to require expressly that a Bank include in the application digest for each NFICU applicant a written summary of the manner in which the applicant has complied with the requirements of proposed § 1263.19(a). FHFA would expect a Bank to note in the digest the date on which the NFICU applicant transmitted to its state regulator the request required under proposed § 1263.19(a)(2), as well as the date on which the Bank received the written statement addressing the results of that request required under proposed § 1263.19(a)(3). The Agency would also expect the Bank to describe in the digest which of the three types of written statements that are permissible under § 1263.19(a)(3) was used to satisfy the requirement of that provision.

The proposed rule would also revise § 1263.2(c), which requires a Bank to maintain a membership file for each applicant, to make clear that a Bank should include in the file for an NFICU applicant any documents required under proposed § 1263.19.

3. Compliance With the Financial Condition Requirement—§ 1263.11

Existing § 1263.11 governs the manner in which Banks are to determine whether depository institution applicants, including insured depository institutions and CDFI credit unions, are in compliance with the statutory "financial condition" eligibility requirement. Paragraph (a) requires that a Bank review a number of different items regarding the financial condition of depository institution applicants, including: (1) Regulatory financial reports the applicant filed with its regulator for the last six calendar quarters and three year-ends; (2) the applicant's most recent audited financial statements; (3) the applicant's most recent regulatory examination report; (4) a written description of any outstanding enforcement actions against the applicant; and (5) any other relevant document or information concerning the financial condition of the applicant that comes to the Bank's attention.

In its 2010 final rule amending part 1263 to implement the statutory amendments that authorized Bank membership for CDFIs, FHFA revised § 1263.11(a) to make clear that the review requirement applies to CDFI credit unions, in addition to other types of depository institutions. In explaining its decision to make that revision, the Agency explained that "[a]lthough CDFI credit unions do not file regulatory financial reports with the NCUA, they do file comparable reports with their appropriate state regulator, and FHFA believes that those documents may be used to assess the financial condition of the CDFI credit unions."[25] Similarly, Banks can and should use financial reports filed by NFICU applicants with their state regulators to assess the applicants' financial condition. Although the proposed rule would not revise § 1263.11(a) to refer expressly to NFICUs, the review requirements of that provision would nonetheless apply in the case of NFICU applicants, given that NFICUs meeting the prerequisites of § 1263.19 would generally be treated as insured depository institutions for purposes of determining their eligibility for membership under the amended regulation.

Existing § 1263.11(b) establishes three standards that a depository institution applicant must meet to be deemed in compliance with the "financial condition" requirement: (1) It must have received a composite regulatory examination rating from its state regulator within the preceding two years; (2) it must meet all of its minimum statutory and regulatory capital requirements; and (3) it must meet the "minimum performance standard" described in § 1263.11(b)(3). The latter provision deems any applicant that received a composite rating of "1" on its most recent regulatory examination, except for a CDFI credit union, to be automatically in compliance with the "minimum performance standard."[26] That provision requires that any non-CDFI depository institution with an examination rating of "2" or "3," as well as any CDFI credit union regardless of its examination rating, satisfy performance trend criteria relating to its (A) earnings (the applicant must have positive income in four of the six most recent quarters), (B) nonperforming assets (nonperforming loans and leases plus other real estate owned must not exceed 10 percent of total loans and leases plus other real estate owned in the most recent quarter), and (C) allowance for loan and lease losses (the ratio must have been 60 percent or greater during four of the six most recent quarters) in order to meet the "minimum performance standard."[27]

In adopting its final rule on membership for CDFIs in 2010, FHFA decided to require all CDFI credit union applicants—including those with a current state examination rating of "1"—to demonstrate compliance with the performance trend criteria specified in § 1263.11(b)(3), while continuing to exempt other types of depository institutions having a "1" rating from that requirement. In the Supplemental Information to the 2010 final rule, FHFA described its decision to require that even the most highly rated CDFI credit unions satisfy the performance trend criteria as "prudent." The Agency noted that, because such institutions are not subject to oversight by the NCUA and because they had not previously been eligible for membership, the Banks were likely to be less familiar with the state examination processes and ratings systems to which they are subject than with those that apply to federally insured depository institutions.[28]

For similar reasons, the proposed rule would revise § 1263.11(b)(3)(iii) to require that NFICUs meet the minimum performance standard in the same way that CDFI credit unions must under the existing provision—that is, by having received a "1," "2," or "3" composite rating in its most recent regulatory examination and by meeting the performance trend criteria for earnings, nonperforming assets, and allowance for loan and lease losses. FHFA believes that, given the Banks' lack of experience with non-federally-insured credit unions, it is also prudent to require all NFICUs to meet the performance trend criteria as part of satisfying the "financial condition" eligibility requirement. Despite the fact that a subset of credit unions without Federal share insurance—*i.e.,* CDFI credit unions—have been permitted to become Bank members since 2010, it does not appear that the Banks have approved any such institutions for membership to date. Consequently, the safety and soundness concerns arising from the Banks' relative lack of familiarity with the regimes that apply to credit unions that are subject to regulation and supervision only at the state level continue to exist and apply with equal validity to both CDFI credit unions and NFICUs.[29]

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[25] 75 FR at 684.

[26] 12 CFR 1263.11(b)(3)(i), (iii).

[27] 12 CFR 1263.11(b)(3)(i).

[28] 75 FR at 684–685.

The Bank Act requires that the primary Federal banking regulators make available to the Banks, in confidence, reports of condition and other information relating to the condition of any Bank member or other institution with which a Bank contemplates having transactions authorized by the Bank Act, such as applicants for membership.[30] That provision, however, does not apply to state banking regulators and the supervisory reports that they prepare relating to depository institutions organized under state law. Although many Banks have arrangements with state banking regulators, including state credit union regulators, under which those regulators provide the Banks with access to confidential supervisory information, including reports of examination, for the institutions they regulate, that may not be the case for every state. This raises a question as to whether a Bank may approve an application for membership received from an NFICU whose state regulator declines to provide the Bank with access to the reports of examination for its regulated entities or to allow the credit unions it regulates to disclose the composite rating derived from those examinations.

Under the existing membership regulation, compliance with § 1263.11 creates a presumption that a depository institution applicant meets the statutory "financial condition" requirement. While failure to comply with § 1263.11 creates a presumption that a depository institution applicant does not meet the "financial condition" requirement, that presumption of noncompliance may be rebutted. Section 1263.17(d) provides that, if a depository institution applicant does not have a composite regulatory examination rating, does not have the minimum rating required by the regulations, or does not meet the performance trend criteria, the applicant may still meet the "financial condition" requirement if it or the Bank prepares a written justification providing substantial evidence that is acceptable to the Bank that it is in a sound financial condition, notwithstanding its failure to meet one or more of the requirements of § 1263.11.[31] Although FHFA encourages all of the Banks to reach agreements with the appropriate state regulators to allow them to review the reports of examination for all state-chartered depository institutions, a Bank may rely on the alternative provisions of § 1263.17(d) to rebut any presumption of noncompliance with the "financial condition" requirement that arises from a state credit union regulator's decision not to provide a Bank with access to the reports of examination for its regulated entities.

4. Reports and Examinations—§ 1261.31

Existing § 1263.31 sets forth a number of stipulations to which each Bank member is deemed to have agreed as a condition precedent to becoming a Bank member. Under paragraph (b) of this section, each institution admitted to Bank membership agrees that reports of examination by local, state or Federal agencies, or institutions may be furnished by those authorities to the Bank or to FHFA upon request. The proposed rule would revise § 1263.31(b) to specify that, with respect to any member that is an NFICU or CDFI credit union, the member also agrees that reports of examination by any private entity that provides it with share insurance may be furnished to the Bank or to FHFA. To the best of FHFA's knowledge, there is only one insurance company in the United States currently providing private share insurance for state-chartered credit unions.

Under existing § 1263.31(e), each institution also agrees, as a condition of Bank membership, that it will provide to the Bank, within 20 days of filing, copies of reports of condition and operations filed with its appropriate Federal banking agency. The proposed rule would revise that provision to state that each member also agrees to provide any reports of condition and operations it may be required to file with its appropriate state regulator and that each member that is an NFICU or a CDFI credit union agrees to provide any such reports it may be required to file with a private entity providing it with share insurance.

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: The Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations.[32] The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[33] Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.[34] FHFA's regulation "Members of the Federal Home Loan Banks," located at 12 CFR part 1263, contains several collections of information that OMB has approved under control number 2590–0003, which is due to expire on December 31, 2016. The proposed rule would not make any revisions that would affect the burden estimates for those collections of information. Therefore, FHFA has not submitted any materials to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act[35] (RFA) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[36] FHFA has considered the impact of the proposed rule under the RFA. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the Banks, which are not small entities for purposes of the RFA.

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[29] The proposed rule would differ from the guidance letters in making clear that the exemption that applies generally to depository institutions that have received a composite rating of "1" does not apply to NFICUs. The guidance letters did not address this point directly.

[30] 12 U.S.C. 1442(a)(1).

[31] 12 CFR 1263.17(d).

[32] 12 U.S.C. 4513(f).

[33] *See* 44 U.S.C. 3507(a) and (d).

[34] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

[35] 5 U.S.C. 601, *et seq.*

List of Subjects in 12 CFR Part 1263

Federal home loan banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA proposes to amend part 1263 of subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1263—MEMBERS OF THE BANKS

■ 1. The authority citation for part 1263 continues to read as follows:

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

■ 2. Amend § 1263.1 as follows:
■ a. Revise the definitions of "CDFI credit union" and "Community development financial institution or CDFI";
■ b. Add, in alphabetical order, a definition for "Federal share insurance";
■ c. Revise the definition of "Insured depository institution";
■ d. Add, in alphabetical order, a definition for "Non-federally-insured credit union"; and
■ e. Revise the definition of "Regulatory financial report".

The revisions and additions read as follows:

§ 1263.1 Definitions

* * * * *

CDFI credit union means a State-chartered credit union that does not have Federal share insurance and that has been certified as a CDFI by the CDFI Fund.

* * * * *

Community development financial institution or *CDFI* means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), a holding company for such a bank or savings association, or a credit union that has Federal share insurance.

* * * * *

Federal share insurance means insurance coverage of credit union member accounts provided by the National Credit Union Share Insurance Fund under subchapter II of the Federal Credit Union Act (12 U.S.C. 1781 *et seq.*).

* * * * *

Insured depository institution means:

(1) An insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)); and

(2) To the extent provided under § 1263.19, a non-federally-insured credit union.

* * * * *

Non-federally-insured credit union means a State-chartered credit union that does not have Federal share insurance and that has not been certified as a CDFI by the CDFI Fund.

* * * * *

Regulatory financial report means a financial report that an institution is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks and savings associations, quarterly or semi-annual call report for credit unions, NAIC's annual or quarterly statement for insurance companies, or other similar report, including such report maintained by the appropriate regulator in an electronic database.

* * * * *

§ 1263.2 [Amended]

■ 3. Amend § 1263.2:
■ a. By removing the word "1263.18" wherever it appears and, in its place, adding the word "1263.19"; and
■ b. In paragraph (b), by adding after the final period the words "In preparing a digest for a non-federally-insured credit union applicant, the Bank shall summarize the manner in which the applicant has complied with the requirements of § 1263.19(a).".

§ 1263.3 [Amended]

■ 4. Amend § 1263.3, in paragraph (c), by removing from the second sentence the words "a Bank" and adding in their place the words "the Bank".

§ 1263.11 [Amended]

■ 5. Amend § 1263.11, in paragraph (b)(3)(iii), by removing the words "A CDFI credit union applicant" and adding in their place the words "An applicant that is a CDFI credit union or a non-federally-insured credit union".

Subpart C—Eligibility Requirements

■ 6. Add § 1263.19 and move it from subpart D to subpart C.

The addition reads as follows:

§ 1263.19 Non-federally-insured credit unions.

(a) *Applicants.* Except where otherwise provided, a non-federally-insured credit union applying to become a member of a Bank shall be treated as an insured depository institution for purposes of determining its eligibility for membership under this part, provided that all of the following requirements have been met:

(1) *Provisional completion of application.* After a non-federally-insured credit union initiates the application process, the Bank shall obtain from the applicant all information required by this part, and any other information the Bank deems necessary, to process the application, except for the items required under paragraphs (a)(2) and (3) of this section. Upon obtaining all such information, the Bank shall notify the applicant in writing that its application is provisionally complete and that, in order to complete the application process, it must comply with paragraph (a)(2) of this section and subsequently provide one of the items listed in paragraph (a)(3) of this section.

(2) *Request to regulator.* After receipt of the notice required under paragraph (a)(1) of this section, the applicant shall send to its appropriate State regulator a written request for a determination that the applicant meets all requirements for Federal share insurance as of the date of the request. The applicant shall provide to the Bank a copy of that request simultaneously with its transmittal to the regulator.

(3) *Final completion of application.* The Bank shall deem an application to be complete, and shall act upon the application in accordance with § 1263.3(c), upon obtaining from the applicant any one of the following items:

(i) A written statement from the applicant's appropriate State regulator that the applicant met all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section;

(ii) A written statement from the applicant's appropriate State regulator that it cannot or will not make a determination regarding the applicant's eligibility for Federal share insurance; or

(iii) A written statement from the applicant, prepared no earlier than the end of the six-month period beginning on the date of the request sent pursuant to paragraph (a)(2) of this section, certifying that the applicant did not receive from its appropriate State regulator within that six-month period either a response as described in paragraph (a)(3)(i) or (ii) or a response stating that that the applicant did not meet all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section.

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[36] *See* 5 U.S.C. 605(b).

(b) *Members canceling Federal share insurance.* A Bank member that is a federally insured credit union and that subsequently cancels its Federal share insurance may remain a member of the Bank, subject to all regulatory provisions applicable to insured depository institution members, provided that the Bank has determined that the institution has canceled its Federal share insurance voluntarily.

Subpart E—Withdrawal, Termination, and Readmission

■ 7. Revise the heading of subpart E to read as set out above.

■ 8. Amend § 1263.31 by revising paragraphs (b) and (e) to read as follows:

§ 1263.31 Reports and examinations.

* * * * *

(b) Agrees that reports of examination by local, State, or Federal agencies or institutions, or by any private entity providing share insurance to a member that is a non-federally-insured credit union or a CDFI credit union, may be furnished by such authorities or entities to the Bank or FHFA upon request;

* * * * *

(e) To the extent applicable, agrees to provide to the Bank, within 20 days of filing, copies of reports of condition and operations required to be filed with:

(1) The member's appropriate Federal banking agency;

(2) The member's appropriate State regulator; or

(3) Any private entity providing share insurance to a member that is a non-federally-insured credit union or a CDFI credit union.

Dated: September 22, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–23289 Filed 9–27–16; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9116; Directorate Identifier 2016–NM–068–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767–200, –300, and –400ER series airplanes. This proposed AD was prompted an evaluation by the design approval holder (DAH) indicating that the fuselage skin lap splices are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections to detect any crack in the fuselage skin at the skin lap splices. We are proposing this AD to detect and correct cracks at the fuselage skin lap splice, which can rapidly link up, possibly resulting in rapid decompression and loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9116.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9116; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9116; Directorate Identifier 2016–NM–068–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage (MSD) is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We determined that the existing Boeing 767 Maintenance Planning Document (MPD) Section 9 Airworthiness Limitation Instructions inspection program is not sufficient to preclude the occurrence of WFD in the fuselage skin lap splice as the airplane ages. The fuselage skin lap splice has multiple similar adjacent details that have the potential for MSD and the potential for WFD. 14 CFR 26.21 requires evaluation of such designs for the potential for WFD and implementation of the appropriate service actions to ensure that WFD is precluded before the airplane's LOV. We have received no reports of cracks in the fuselage skin lap splices. WFD cracking at the fuselage skin lap splice, if not corrected, could rapidly link up, possibly resulting in rapid decompression and loss of structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016. The service information describes procedures for repetitive inspections and repair for any crack in the fuselage skin at the skin lap splices. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9116.

Difference Between This Proposed AD and the Service Information

Paragraph 1.B., "Concurrent Requirements," of Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016, identifies Boeing Alert Service Bulletin 767–53A0260 as a concurrent service bulletin. However, this proposed AD would not require Boeing Alert Service Bulletin 767–53A0260, as a concurrent service bulletin.

Costs of Compliance

We estimate that this proposed AD affects 332 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	168 work-hours × $85 per hour = $14,280 per inspection cycle.	$0	$14,280 per inspection cycle	$4,740,960 per inspection cycle.

The size of the area that requires repair must be determined before material and work-hour costs can be estimated. Additionally, materials for repairs are operator supplied. Therefore, we cannot provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9116; Directorate Identifier 2016–NM–068–AD.

(a) Comments Due Date

We must receive comments by November 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin lap splices are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracks at the fuselage skin lap splice, which can rapidly link up, possibly resulting in rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections and Corrective Actions

Except as specified by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016: Do external surface high frequency eddy current (HFEC), internal surface HFEC, and external surface low frequency eddy current (LFEC) inspections, as applicable, to detect cracks in the fuselage skin lap splices, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016. If any crack is found during any inspection required by this AD, before further flight, repair in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016. Repeat the inspections thereafter at the times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016, as applicable.

(h) Service Information Exception

Where Boeing Alert Service Bulletin 767–53A0264, Revision 1, dated April 25, 2016, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–53A0264, dated May 12, 2015.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 16, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–23082 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM16–13–000]

Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to approve Reliability Standards BAL–005–1 (Balancing Authority Control)

and FAC–001–3 (Facility Interconnection Requirements) submitted by the North American Electric Reliability Corporation.

DATES: Comments are due November 28, 2016.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Syed Ahmad (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8718, *Syed.Ahmad@ferc.gov.*

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6362, *Julie.Greenisen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standards BAL–005–1 (Balancing Authority Control) and FAC–001–3 (Facility Interconnection Requirements), submitted by the North American Electric Reliability Corporation (NERC), and to retire Reliability Standards BAL–005–0.2b (Automatic Generation Control), FAC–001–2 (Facility Interconnection Requirements), and BAL–006–2 (Inadvertent Interchange). The Commission also proposes to approve the associated implementation plans, violation risk factors, and violation severity levels for Reliability Standards BAL–005–1 and FAC–001–3. Finally, the Commission proposes to approve three revised definitions for the glossary of terms used in NERC Reliability Standards (NERC Glossary).

2. Proposed Reliability Standards BAL–005–1 and FAC–001–3 will enhance the reliability of the Bulk-Power System, as compared to currently-effective Reliability Standards BAL–005–0.2b and FAC–001–2, by clarifying and consolidating existing requirements related to frequency control. The proposed Reliability Standards support more accurate and comprehensive calculation of Reporting Area Control Error (ACE) by requiring timely reporting of an inability to calculate Reporting ACE and by requiring balancing authorities to maintain minimum levels of annual availability of 99.5% for each balancing authority's system for calculating Reporting ACE.[2]

3. As discussed below, we have questions regarding the proposed retirement of Requirement R15 of Reliability Standard BAL–005–0.2b, which requires responsible entities to maintain and periodically test backup power supplies at primary control centers and other critical locations. Depending on the explanation received in comments, the Commission may issue a directive in the final rule to restore the substance of Requirement R15 in the Reliability Standards. Separately, we propose to approve NERC's request to retire Reliability Standard BAL–006–2 upon the latter of the effective date of proposed Reliability Standard BAL–005–1 and the NERC Operating Committee's approval of an Inadvertent Interchange Guideline document.

I. Background

A. Mandatory Reliability Standards and Order No. 693 Directive

4. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[3] Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[4]

5. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC as the ERO.[6] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standards BAL–005–0 (Automatic Generation Control), FAC–001–0 (Facility Interconnection Requirements), and BAL–006–1 (Inadvertent Interchange).[7] However, in approving Reliability Standards BAL–005–0 and BAL–006–1, the Commission directed NERC to develop modifications to those Reliability Standards through the standards development process.

6. With respect to Reliability Standard BAL–005–0, the Commission directed NERC to develop a modification that:

> (1) Develops a process to calculate the minimum regulating reserve a balancing authority must have at any given time taking into account expected load and generation variation and transactions being ramped into or out of the balancing authority; (2) changes the title of the Reliability Standard to be neutral as to the source of regulating reserves and to allow the inclusion of technically qualified DSM and direct control load management; (3) clarifies Requirement R5 of this Reliability Standard to specify the required type of transmission or backup plans when receiving regulation from outside the balancing authority when using non-firm service; and (4) includes Levels of Non-Compliance and a Measure that provides for a verification process over the minimum required automatic generation control or regulating reserves a balancing authority must maintain.[8]

Since then, the Commission has approved one interpretation of Reliability Standard BAL–005–0 and accepted two errata filings.[9] The currently-effective version of the Reliability Standard is BAL–005–0.2b.

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[1] 16 U.S.C. 824(o).

[2] NERC states that Reporting ACE "represents a Balancing Authority Area's [] Area Control Error [] measured in megawatts [] as the difference between the [Balancing Authority Area's] Actual and Scheduled Net Interchange, plus its Frequency Bias Setting obligation and meter error corrections. Reporting ACE helps Responsible Entities provide reliable frequency control by indicating the current state of the entity's contribution to Reliability." NERC Petition at 3.

[3] 16 U.S.C. 824o(d)(2).

[4] *Id.* 824o(e).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 420, 439, and 680, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[8] *Id.* P 420.

[9] *See Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* Order No. 713, 124 FERC ¶ 61,071 (2008); *North American Electric Reliability Corp.,* Docket No. RD09–2–000 (May 13, 2009) (delegated letter order); *North American Electric Reliability Corp.,* Docket No. RD12–4–000 (Sept. 13, 2012) (delegated letter order).

7. With respect to Reliability Standard BAL–006–1, the Commission directed NERC to develop a modification "that adds Measures concerning the accumulation of large inadvertent imbalances and Levels of Non-Compliance." [10] The Commission explained the need for such a modification as follows:

> While we agree that inadvertent imbalances do not normally affect the real-time operations of the Bulk-Power System and pose no immediate threat to reliability, we are concerned that large imbalances represent dependence by some balancing authorities on their neighbors and are an indication of less than desirable balancing of generation with load. The Commission also notes that the stated purpose of this Reliability Standard is to define a process for monitoring balancing authorities to ensure that, over the long term, balancing authorities do not excessively depend on other balancing authorities in the Interconnection for meeting their demand or interchange obligations.[11]

Since then, the Commission has approved one revision to Reliability Standard BAL–006–1 to remove the regional waiver of certain requirements for the Midwest ISO, following the Midwest ISO's transition to a single balancing authority model.[12] The currently-effective version of the Reliability Standard is BAL–006–2.

B. NERC Petition

8. On April 20, 2016, NERC filed a petition seeking approval of proposed Reliability Standards BAL–005–1 (Balancing Authority Control) and FAC–001–3 (Facility Interconnection Requirements), nine new or revised definitions associated with the proposed Reliability Standards, and retirement of currently-effective Reliability Standards BAL–005–0.2b (Automatic Generation Control), FAC–001–2 (Facility Interconnection Requirements), and BAL–006–2 (Inadvertent Interchange).

9. NERC requests that the two revised Reliability Standards and the revised definitions of Automatic Generation Control, Pseudo-Tie, and Balancing Authority become effective on the first day of the first calendar quarter twelve months from the effective date of the applicable governmental authority's approval of NERC's petition. NERC also requests that the retirement of Reliability Standard BAL–006–2 become effective upon the latter of the effective date of proposed Reliability Standard BAL–005–1 and the NERC Operating Committee's approval of the Inadvertent Interchange Guideline document. For the six remaining definitions (Reporting ACE and its component definitions—Actual Frequency, Actual Net Interchange, Scheduled Net Interchange, Interchange Meter Error, and Automatic Time Error Correction), NERC requests an effective date of July 1, 2016, to coincide with the effective date for BAL–001–2.

10. NERC subsequently withdrew its request for approval of the six Reporting ACE-related definitions from the instant docket, and filed for expedited approval of the six definitions in a separate docket. The six definitions were approved by delegated letter order on June 23, 2016, and are no longer at issue in the instant proceeding.[13]

11. NERC explains in its petition that proposed Reliability Standards BAL–005–1 and FAC–001–3 and the proposed retirement of Reliability Standard BAL–006–2 came about as part of the second phase of NERC's project to "clarify, consolidate, streamline, and enhance the Reliability Standards addressing frequency control." [14] NERC indicates in its petition that the standard drafting team developed the proposed revisions after reviewing applicable Commission directives, "Paragraph 81" criteria, and the recommendations of the periodic review team that examined Reliability Standards BAL–005–0.2b and BAL–006–2.[15]

12. NERC describes the revisions to Reliability Standard BAL–005–0.2b as clarifying and refining the current requirements "for accurate, consistent, and complete" Reporting ACE, which is a key frequency control and reliability indicator.[16] These revisions include relocating some of the current requirements of Reliability Standard BAL–005–0.2b, which relate to confirming that facilities are within a balancing authority's metered boundary, into the proposed Facility Interconnection Requirements Reliability Standard, FAC–001–3. In addition, NERC proposes to relocate Requirement R3 of currently-effective Reliability Standard BAL–006–2 into proposed Reliability Standard BAL–005–1, explaining that the requirement relates to ensuring that balancing authorities use consistent data sources to calculate Reporting ACE, and therefore more properly belongs in Reliability Standard BAL–005.

13. NERC explains that the proposed Reliability Standards "represent substantial improvements over existing Reliability Standards by helping to support more accurate and comprehensive calculation of Reporting ACE and satisfying all remaining Commission directives for Reliability Standards BAL–005 and BAL–006." [17] Further, NERC maintains that proposed Reliability Standard BAL–005–1 is an improvement over the currently-effective version, BAL–005–0.2b, because it "consolidates unnecessary or repetitive Requirements and moves certain metrics for calculating Reporting ACE to the revised, proposed definition of Reporting ACE." [18] Among other things, NERC proposes to move requirements applicable to generator operators and transmission operators in currently-effective Reliability Standard BAL–005–0.2b, into a more appropriate standard, explaining that "[a]s the purpose of FAC–001–3 is more commensurate with interconnection responsibilities, interconnection procedures contained in currently effective BAL–005–0.2b should be included in proposed Reliability Standard FAC–001–3." [19]

14. In addition, NERC asserts that proposed Reliability Standard BAL–005–1 improves on the currently-effective version of the Reliability Standard because proposed Requirement R2 clarifies the performance expectations for notification to reliability coordinators when a balancing authority is unable to calculate Reporting ACE for 30 minutes or more,[20] and Requirement R5 "introduces a new obligation . . . to assure the availability of a BA's system used to calculate Reporting ACE," requiring a minimum availability of 99.5% in each calendar year.[21]

15. NERC states that the proposed package of revisions reflected in its petition address the outstanding directives related to Reliability Standards BAL–005 and BAL–006 from Order No. 693. Specifically, NERC states that the title of Reliability Standard

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[10] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 428.

[11] *Id.*

[12] *See North American Electric Reliability Corp.*, 134 FERC ¶ 61,007 (2011).

[13] *North American Electric Reliability Corp.*, Docket No. RD16–7–000 (June 23, 2016) (delegated letter order).

[14] NERC Petition at 2 (referencing Project 2010–14.2.1 Phase 2 of Balancing Authority Reliability-based Controls).

[15] *Id.* at 3 (citing *North American Elec. Reliability Corp.*, 138 FERC ¶ 61,193 at P 81, *order on reh'g and clarification*, 139 FERC ¶ 61,168 (2012); *Petition of the North American Electric Reliability Corporation for Approval of Retirement of Requirements in Reliability Standards*, Docket No. RM13–8–000, at Exhibit A ("Paragraph 81 Criteria") (filed Feb. 28, 2013); *Electric Reliability Organization Proposed to Retire Requirements in Reliability Standards*, Order No. 788, 145 FERC ¶ 61,147 (2013)).

[16] *Id.*

[17] *Id.* at 12.

[18] *Id.* at 13.

[19] *Id.* at 23.

[20] *Id.* at 16.

[21] *Id.* at 19.

BAL–005–1 has been modified from Automatic Generation Control to Balancing Authority Control "to reflect the connection to Reporting ACE and resource-neutral requirements."[22] In addition, NERC indicates that it has revised the definition of Automatic Generation Control to ensure a resource-neutral process for controlling demand and resources.[23]

16. NERC states that the requirements of proposed Reliability Standard BAL–005–1 all have a "medium" violation risk factor, thereby addressing the Commission's directive to revise the violation risk factor for Reliability Standard BAL–005–0, Requirement R17 to "medium."[24] Similarly, NERC asserts that it has met the directive to consider Xcel and FirstEnergy's comments about the scope of Requirement R17, which set minimum accuracy requirements for time error and frequency devices, by retiring part of the currently-effective requirement and moving the minimum accuracy requirements into Requirement R3 of Reliability Standard BAL–005–1. NERC maintains that this has "streamlined obligations to use specific frequency metering equipment that is necessary for operation of [automatic generation control (AGC)] and accurate calculation of Reporting ACE, as this ensures that costs associated with implementation are commensurate with reliability benefit."[25]

17. NERC proposes to move Requirement R3 from currently-effective Reliability BAL–006–2 into proposed Reliability Standard BAL–005–1, but proposes to retire the rest of the requirements of Reliability Standard BAL–006–2 (Requirements R1, R2, R4, and R5). NERC states that the standard drafting team determined that, aside from Requirement R3, each of the requirements in Reliability Standard BAL–006–2 are "energy accounting standards" and/or are "administrative" in nature, and should accordingly be retired.[26]

18. While NERC acknowledges that the Commission previously directed it to develop measures concerning the accumulation of large inadvertent imbalances, based on the Commission's concern that large imbalances may indicate an underlying problem, NERC explains that the requirements of Reliability Standard BAL–001–2, which require balancing authorities to maintain clock-minute ACE within the Balancing Authority ACE Limit, as well as the requirements of Reliability Standard BAL–003–1 and proposed Reliability Standard BAL–002–2, which require entities to restore Reporting ACE within predefined bounds, prevent any excessive dependency on other entities. As NERC explains in its petition:

> Because entities are supporting frequency through this coordinated suite of reliability standards, entities will not excessively depend on other entities in the Interconnection such that the purely economic issue that was addressed by BAL–006–2 becomes a reliability issue for a NERC Reliability Standard.[27]

19. In order to address "any remaining or potential concerns with retirement of BAL–006–2," NERC proposes that the retirement become effective only upon the Operating Committee's approval of an Inadvertent Interchange Guideline document.[28] NERC states that the Inadvertent Interchange Guideline document was based on a white paper developed by the standard drafting team for Reliability Standards BAL–005 and BAL–006, and maintains that it provides an in-depth justification for why a NERC Reliability Standard is not necessary for inadvertent interchange.

20. With respect to the three proposed definitions that remain at issue in this proceeding, NERC explains that (1) "Automatic Generation Control" has been revised to set forth a resource-neutral process for controlling demand and resources; (2) "Pseudo-Tie" has been updated to reflect the use of the term "Reporting ACE"; and (3) "Balancing Authority" has been revised to more accurately describe a balancing authority's resource demand function.

C. NERC Supplemental Filing

21. On June 14, 2016, NERC submitted supplemental information in support of its April 20, 2016 petition (Supplemental Filing), to provide additional explanation and support for the retirement of Requirement R15 in currently-effective Reliability Standard BAL–005–0.2b.[29] In its Supplemental Filing, NERC maintains that Requirement R15 should be retired because the objectives of that requirement (*i.e.,* to ensure the continued operation of AGC and certain data recording equipment during the loss of normal power supply) are being addressed through other Reliability Standards and requirements. Specifically, NERC maintains that Reliability Standard EOP–008–1 requires a balancing authority to have a backup control center facility and an operating plan that allows it to meet its functional obligations with regard to the reliable operation of the bulk electric system in the event that its primary control center functionality is lost.[30]

22. In addition, NERC maintains that the proposed performance requirements of Requirement R3 of Reliability BAL–005–1, which would require balancing authorities to "use frequency metering equipment for the calculation of Reporting ACE that is available a minimum of 99.95% of each calendar year," will help to ensure that balancing authorities can continuously operate the equipment necessary for the calculation of Reporting ACE, effectively eliminating the need for Requirement R15.[31]

II. Discussion

23. Pursuant to FPA section 215(d)(2), we propose to approve Reliability Standards BAL–005–1 and FAC–001–3 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Proposed Reliability Standard BAL–005–1 and FAC–001–3 will enhance reliability as compared to currently-effective Reliability Standards BAL–005–0.2b and FAC–001–2, because the proposed Reliability Standards clarify and consolidate existing requirements related to frequency control. In addition, proposed Reliability Standard BAL–005–1 supports more accurate and comprehensive calculation of Reporting ACE by requiring timely reporting of an inability to calculate Reporting ACE (Requirement R2) and by requiring minimum levels of availability and accuracy for each balancing authority's system for calculating Reporting ACE (Requirement R5).

24. We also propose to approve the violation risk factors and violation severity levels associated with Reliability Standards BAL–005–1 and FAC–001–3; the proposed revisions to the definitions of Automatic Generation Control, Pseudo-Tie, and Balancing Authority; the proposed retirement of

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[22] *Id.* at 13 (referencing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 404, and noting that the Commission's directive related to resource-neutrality for regulating reserves is now moot, as Requirement R2 of Reliability Standard BAL–005–0.2b, which required entities to maintain regulating reserves, has been retired).

[23] *Id.* at n.39.

[24] *Id.* at 17; *see also North American Elec. Reliability Corp.,* 121 FERC P 61,179 at P 58 (2007).

[25] *Id.* at 18.

[26] *Id.* at 25–26.

[27] *Id.* at 27.

[28] The Inadvertent Interchange Guideline document is expected to be presented to the NERC Operating Committee in mid-September 2016, and will be posted for a 45-day comment period.

[29] As NERC notes in its Supplemental Filing, NERC stated in its initial petition that "Requirements R2, R7 and R15 . . . are redundant, ineffective, and should be retired based on Commission-approved Paragraph 81 Criteria." NERC Supplemental Filing at 1 (quoting April 20 Petition at 15).

[30] NERC Supplemental Filing at 2.

[31] *Id.* at 4.

Reliability Standards BAL–005–0.2b, FAC–001–2, and BAL–006–2 in accordance with NERC's implementation plan; and NERC's implementation plans for proposed Reliability Standards BAL–005–1 and FAC–001–3.

25. As discussed below, the Commission seeks comment from NERC and other interested entities regarding the retirement of Requirement R15 of Reliability Standard BAL–005–0.2b, which requires responsible entities to maintain and periodically test backup power supplies at primary control centers and other critical locations. Depending on the explanation received in the comments, the Commission may issue a directive in the final rule requiring NERC to restore this requirement through the standards development process.

A. Retirement of Reliability Standard BAL–005–0.2b, Requirement R15

26. Proposed Reliability Standard BAL–005–1 would eliminate currently-effective Requirement R15 from the standard, which states as follows:

> The Balancing Authority shall provide adequate and reliable backup power supplies and shall periodically test these supplies at the Balancing Authority's control center and other critical locations to ensure continuous operation of AGC and vital data recording equipment during loss of the normal power supply.

27. NERC contends that Requirement R15 should be retired because it is "redundant" and "ineffective," and points to a number of other Reliability Standards and requirements that, NERC maintains, achieve the same objective as Requirement R15. Specifically, NERC explains that requirements in Reliability Standard EOP–008–1 (Loss of Control Center Functionality) and the performance requirements of Requirement R3 in proposed Reliability Standard BAL–005–1 address the same objectives as existing Requirement R15 (*i.e.,* to ensure the continued operations of AGC and certain data recording equipment during the loss of normal power supply).[32]

28. NERC contends that Reliability Standard EOP–008–1 requires a balancing authority to have a backup control center facility and an operating plan that allows it to meet its functional obligations with regard to the reliable operation of the bulk electric system in the event that its primary control center functionality is lost. NERC asserts that these requirements effectively address the same reliability objective as Reliability Standard BAL–005–0.2b Requirement R15 because a balancing authority's "functional obligations regarding reliable operations"[33] include the continuous operation of AGC and the data recording equipment necessary to balance generation and load. Further, NERC contends that Requirement R7 of Reliability Standard EOP–008–1 requires balancing authorities to test their operating plans annually to demonstrate the viability of their backup functionality.

29. NERC maintains that the proposed performance requirements in Requirement R3 of Reliability Standard BAL–005–1, which require balancing authorities to "use frequency metering equipment for the calculation of Reporting ACE that is available a minimum of 99.95% of each calendar year," will help ensure that balancing authorities can continuously operate the equipment necessary for the calculation of Reporting ACE. NERC notes that if a balancing authority "fails[s] to have adequate and reliable backup power supplies at its control center to ensure continuous operation of its AGC and vital data recording equipment, the Balancing Authority risks violation of the performance obligation in proposed Reliability Standard BAL–005–1, Requirement R3 if its normal power supply is lost."[34]

Commission Request for Comments

30. We recognize that the approach taken in revised Reliability Standard BAL–005–1, combined with the requirements of Reliability Standard EOP–008–1, represents a more performance-based approach to maintaining functionality for reliable operation of the interconnected bulk electric system, including ensuring the continued operation of AGC and certain data recording equipment during the loss of normal power supply, compared to the more specific approach of Requirement R15 in Reliability Standard BAL–005–0.2b. Moreover, balancing authorities currently appear to be the only type of functional entity explicitly required to have and to test adequate and reliable backup supply at critical locations. For example, there is no provision parallel to Requirement R15 that reliability coordinators or transmission operators provide "adequate and reliable backup power supplies" at their primary control centers and "other critical locations."

31. Nonetheless, after considering NERC's Petition and Supplemental Filing addressing the matter, we continue to have questions as to whether the objectives of Requirement R15 are met, as NERC contends, by other requirements in Reliability Standard EOP–008–1 and proposed Reliability Standard BAL–005–1. In particular, Requirement R15 of currently-effective Reliability Standard BAL–005–0.2b helps to ensure continued operability of balancing authorities' primary control centers, despite the loss of normal power supply, without evacuation to or activation of backup control centers. Thus, this provision appears to provide additional robustness in the primary control center and mitigates the risk of problems occurring in the transition to a secondary control center. We also note that NERC's Independent Expert Review Project (IERP) report did not include Requirement R15 among the requirements recommended for retirement when it reviewed Reliability Standard BAL–005–0.2b in 2013.[35] While the IERP report explicitly recommended retiring other provisions of Reliability Standard BAL–005–0.2b, it recommended retaining Requirement R15 as part of the Future Enforceable Set of requirements.[36]

32. Accordingly, we are not persuaded based on the current record that it is appropriate to eliminate balancing authorities' existing obligation to have and periodically test backup power supply at a primary control center. We, therefore, seek additional justification for the retirement of Requirement R15 of Reliability Standard BAL–005–0.2b. Specifically, the Commission seeks comment on the benefits and potential burden of retaining Requirement R15. We also seek an explanation as to why, historically, there is no parallel to Requirement R15 for reliability coordinators and transmission operators, and whether any reason exists to distinguish between balancing authorities and other entities, such as reliability coordinators and transmission operators, that may operate a control center or critical facility with respect to the need for backup power supply and testing at such locations.

33. The Commission further seeks comment on the following questions:

1. If Requirement R15 of Reliability Standard BAL–005–0.2b is retired, can balancing authorities comply with Reliability Standard EOP–008–1 by having a primary control center and "backup functionality" without a backup power supply at the primary control center or without a backup

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[32] *Id.* at 2–4.

[33] *Id.* at 3.

[34] *Id.* at 4–5.

[35] Standards Independent Experts Review Project at 26, *http://www.nerc.com/pa/Stand/Resources/Documents/Standards_Independent_Experts_Review_Project_Report.pdf.*

[36] *Id.* at 1.

power supply at the location providing backup functionality? Are reliability coordinators and transmission operators compliant with Reliability Standard EOP–008–1 by having a primary control center and "backup functionality" without a backup power supply at the primary control center or without a backup power supply at the location providing backup functionality?

2. Explain the benefits and potential burdens for the reliable operation of the bulk electric system in having a backup power supply at the primary control center. Is it more appropriate to have backup power supply sited at a location providing backup functionality? Does the potential impact to reliability change if the entity is a reliability coordinator or transmission operator?

3. Describe current practices with respect to the availability of backup power supplies at primary control centers and other critical locations. In particular, do any reliability coordinators, transmission operators, or balancing authorities currently have a primary control center without a backup power supply?

4. What does the reference in Reliability Standard BAL–005–0.2b Requirement R15 to "other critical locations" include? Does it include facilities beyond primary control centers and locations providing backup functionality?

5. Does the use of frequency metering equipment to calculate Reporting ACE that is available a minimum of 99.95% of each calendar year, as proposed in Reliability Standard BAL–005–1, Requirement R3, ensure "continuous operation of AGC and vital data recording equipment during loss of the normal power supply," per Reliability Standard BAL–005–0.2b, Requirement R15? What other functions would be included as part of the metering equipment and data collection of Reliability Standard BAL–005–1, Requirement R3? What functions currently part of Reliability Standard BAL–005–0.2b, Requirement R15 would be omitted?

6. Do the requirements in Reliability Standard EOP–008–1 for backup functionality ensure the "continuous operation of AGC and vital data recording equipment," and the ability to collect data to calculate Reporting ACE, in the case of the unavailability of such equipment for a period within the bounds of proposed Reliability Standard BAL–005–1, Requirement R3?

III. Information Collection Statement

34. The Paperwork Reduction Act (PRA)[37] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons, or contained in a rule of general applicability. The OMB regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[38] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

35. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

36. This Notice of Proposed Rulemaking (NOPR) proposes to approve revisions to Reliability Standards BAL–005, associated with FERC–725R and FAC–001, associated with FERC–725D. These proposed revisions streamline and clarify the current requirements related to the calculation of Reporting ACE—a key frequency control and reliability indicator factor—including consolidating the seventeen requirements of currently-effective BAL–005–0.2b, associated with FERC–725R, into seven requirements in BAL–005–1, relocation of certain requirements related to interconnection requirements for transmission owners and generation owners into FAC–001–3, relocation of Requirement R3 in currently-effective BAL–006–2 into proposed BAL–005–1, and relocation of certain metrics and calculations required for calculating Reporting ACE into the NERC definition of Reporting ACE and its component definitions.

37. NERC's proposed revisions to Reliability Standards BAL–005 and FAC–001will not result in an increase in the record-keeping and reporting requirements imposed on balancing authorities, other than the one-time cost of administering the change to the revised standard. All other recordkeeping and reporting obligations imposed on balancing authorities under the revised requirements essentially track those that already exist under currently-effective Reliability Standards BAL–005–0.2b and FAC–001–2. The proposed revisions to FAC–001–3 will result in a limited increase in the record-keeping and reporting requirements imposed on those transmission owners and generator owners that are not also transmission operators and generator operators (about 198 entities in the United States), as shown in the chart below.[39] Many of the revisions to the Reliability Standards reflected in this NOPR were developed to help clarify and streamline existing requirements related to calculation of Reporting ACE, and are expected to simplify these entities' overall burden with respect to recordkeeping, reporting, and compliance. Moreover, the NOPR proposes to allow the retirement of the bulk of the requirements in Reliability Standard BAL–006–2, further reducing the overall record-keeping and reporting requirements for balancing authorities. Accordingly, the Commission estimates that the overall change in the record-keeping and reporting requirements as a result of this rulemaking will be *de minimis* on a per-entity basis.

38. *Public Reporting Burden:* The changes reflected in proposed Reliability Standard BAL–005–1 are not expected to result in an increase in the annual record-keeping and reporting requirements on applicable entities (balancing authorities). However, balancing authorities will have to perform a one-time review of the new standard to ensure that their compliance practices (including record-keeping) are consistent with the revised requirements. The relocation of Requirement R1 of Reliability Standard BAL–005–0.2b into Reliability Standard FAC–003–1 will result in an increase in the number of entities subject to the requirement, as the requirement will be applicable to transmission owners and generator owners rather than transmission operators and generator operators. This limited increase in annual record-keeping and reporting burden, along with the one-time burden of administering the change from BAL–005–0.2b to BAL–005–1, is however expected to be offset to some extent by the decrease in record-keeping and reporting burden associated with the retirement of Reliability Standard BAL–006–2 (in considering the overall record-keeping and reporting requirements associated with the revised Reliability Standards).

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[37] 44 U.S.C. 3501–3520.

[38] 5 CFR 1320.11.

[39] Proposed Reliability Standard FAC–001–3 replaces and strengthens currently effective Reliability Standard FAC–001–2 by moving currently effective Requirement R1 of Reliability Standard BAL–005–0.2b to proposed Reliability Standard FAC–001–3, requiring that transmission owner and generator owner interconnection requirements include procedures for confirming that new or materially modified facilities connecting to the bulk electric system are within a balancing authority's metered boundaries. NERC explains that these interconnection requirements should be relocated to Reliability Standard FAC–001–3, as FAC–001–3 establishes facility interconnection requirements.

Data collection FERC 725D & 725R (modifications in RM16–13–000)	Number of respondents[40] (1)	Number of responses per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden hours & cost per response[41] (4)	Annual burden hours & total annual cost[42] (3) × (4) = (5)
BAL–005–1 (FERC–725R)	BA 105	1 (one-time)	105	1 $95.35	105 $10,325
FAC–001–3 R3 (FERC–725D)	GO/TO 198[43]	1 (annual)	198	1 [44] $63.25	.... $12,523.50
Retirement of current standard BAL–006–02 currently in (FERC–725R).	BA 105	−1 (annual)	−105	−1 −$31.15	105 −$3,270.75
Total	....	....	....	....	$19,577.75

Title: FERC–725D, Mandatory Reliability Standards: FAC Reliability Standards; FERC–725R, Mandatory Reliability Standards: BAL Reliability Standards

Action: Proposed Revisions.

OMB Control No: 1902–0247 (FERC–725D); 1902–0268 (FERC–725R).

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Responses: On-going.

Necessity of the Information: The Commission has reviewed the requirements of Reliability Standards BAL–005–1 and FAC–001–3 and has made a determination that the requirements of these Reliability Standards are necessary to implement section 215 of the FPA.

Internal Review: The Commission reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

39. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

40. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include FERC–725R and Docket Number RM16–13–000.

IV. Environmental Analysis

41. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[45] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[46] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

42. The Regulatory Flexibility Act of 1980 (RFA)[47] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected. The Small Business Administration (SBA) revised its size standard effective January 22, 2014 for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's size standards, some balancing authorities, generation owners, and transmission owners will fall under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.[48]

43. As noted above, the Commission estimates a very limited, one-time increase in record-keeping and reporting burden on balancing authorities due to the changes in the revised Reliability Standards, with no other increase in the cost of compliance. Approximately 24 of the 105 balancing authorities are expected to meet the SBA's definition for a small entity. In addition, approximately 198 entities will be subject to new record-keeping and reporting requirements under revised Reliability Standard FAC–001–3, with no other increase in the cost of compliance. Approximately 177 of these entities are expected to meet the SBA's definition of a small entity.

44. Even assuming that the one-time cost of compliance for administering the change from Reliability Standard BAL–005–0.2b to BAL–005–1 is an annual

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[40] The estimated number of respondents is based on the NERC compliance registry as of August 12, 2016. According to the NERC compliance registry, there are 70 U.S. balancing authorities (BA) in the Eastern Interconnection, 34 balancing authorities in the Western Interconnection and one balancing authority in the Electric Reliability Council of Texas (ERCOT).

[41] The burden hours and cost are based on the hourly cost for an engineer for BAL–005–1, the average of the hourly cost for an engineer and clerical staff for FAC–001–3, and the hourly cost for clerical staff for changes associated with the retirement of BAL–006–2.

[42] For purposes of determining the overall annual cost of the record-keeping and reporting changes reflected in this NOPR, the one-time cost associated with administering the change to BAL–005–1 is being treated as an annual cost.

[43] Per the NERC compliance registry, there are 56 generator owners (GO) that are not also generator operators and 142 transmission owners (TO) that are not also transmission operators, for a total of 198 new entities in the United States subject to FAC–001–3 Requirement R3.

[44] The project cost per response for record-keeping and reporting associated with the revisions in FAC–001–3 reflect an average of the hourly cost for an engineer and for clerical staff.

[45] *Regulations Implementing National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., ¶ 30,783 (1987).

[46] 18 CFR 380.4(a)(2)(ii).

[47] 5 U.S.C. 601–612.

[48] 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

cost, and assuming that all of the affected entities qualify as small entities, the total annual cost to the industry as a whole is minimal ($19,577.75), and the average cost per affected entity is $63.23.

45. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."[49] The Commission does not consider the estimated burden to be a significant economic impact. As a result, the Commission certifies that the reforms proposed in this NOPR would not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

46. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 28, 2016. Comments must refer to Docket No. RM16–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

47. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

48. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

49. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

50. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

51. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

52. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Issued: September 22, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23442 Filed 9–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–D–2335]

Use of the Term "Healthy" in the Labeling of Human Food Products; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the establishment of a docket to receive information and comments on the use of the term "healthy" in the labeling of human food products. This action is consistent with our recently released 2016–2025 Foods and Veterinary Medicine (FVM) Program's strategic plan with specific goals for nutrition and other planned and recent activity including the issuance of final rules updating certain of our nutrition labeling regulations. In addition, we received a citizen petition asking that we update, among other things, our nutrient content claim regulations to be consistent with current federal dietary guidance. In particular, the petitioners request that FDA amend the regulation defining the nutrient content claim "healthy" with respect to total fat intake and amend the regulation to emphasize whole foods and dietary patterns rather than specific nutrients. We invite public comment on the term "healthy", generally, and as a nutrient content claim in the context of food labeling and on specific questions contained in this document.

DATES: Submit either electronic or written comments by January 26, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted,

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[49] U.S. Small Business Administration, *A Guide for Government Agencies: How to comply with the Regulatory Flexibility Act*, at 18 (May 2012), *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf*.

marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2335 for "Use of the Term "Healthy" in the Labeling of Human Food Products; Request for Information and Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

A. What has been FDA's position regarding the use of the term "healthy?"

Under section 403(r)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(r)(1)(A)), a food is deemed misbranded if it bears claims, either express or implied, that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA (see section 403(r)(2) of the FD&C Act). Section 201(f) of the FD&C Act (21 U.S.C. 321(f)) defines the term "food" to mean articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article. Section 201(n) of the FD&C Act (21 U.S.C. 321(n)) provides that labeling is misleading if, among other things, it fails to reveal facts that are material in light of representations made or suggested in the labeling, or material with respect to consequences that may result from the use of the food to which the labeling relates under the conditions of use prescribed in the labeling, or under such conditions of use as are customary or usual. Section 201(m) of the FD&C Act defines "labeling" as all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.

The definition in 21 CFR 101.65(d) establishes the parameters for use of the implied nutrient content claim "healthy" or related terms (such as "health", "healthful", "healthfully", "healthfulness", "healthier", "healthiest", "healthily", and "healthiness") on the label or in labeling of a food to suggest that a food, because of its nutrient content, may be useful in creating a diet that is consistent with dietary recommendations, if the food meets certain nutrient conditions, and the claim is made with an explicit or implicit claim or statement about a nutrient (*e.g.*, "healthy, contains 3 grams of fat"). The conditions include specific criteria for nutrients to limit in the diet, such as total fat, saturated fat, cholesterol, sodium, as well as requirements for nutrients to encourage in the diet, including vitamin A, vitamin C, calcium, iron, protein, and fiber. The criteria are linked to elements in the Nutrition Facts label and serving size regulations (see 21 CFR 101.9 and 101.12). The nutrient criteria to use this nutrient content claim can vary for different food categories (*e.g.*, fruits and vegetables, or seafood and game meat) (21 CFR 101.65(d)(2)).

In addition, under section 403(a)(1) of the FD&C Act, a food is deemed misbranded if its labeling is false or misleading in any particular.

B. What has prompted FDA to request information and comments?

On July 14, 2016, we released the FVM Program's Strategic Plan for fiscal years 2016–2025. The strategic plan is organized under four goals: Food safety, nutrition, animal health, and organizational excellence (The strategic plan is available on our Web site at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/UCM507379.pdf.*)

FDA's nutrition-related strategic goals include: Providing and supporting accurate and useful nutrition information to consumers so they can choose healthier diets consistent with the Dietary Guidelines for Americans and other evidence-based recommendations; and encouraging and facilitating new products and product reformulation to promote a healthier food supply. A key element in achieving these goals is the modernization of FDA's regulations for nutrition-related labeling claims to reflect current science, provide information in ways that are understandable and useful to consumers, and reduce barriers and encourage industry efforts to develop and introduce healthier food products through innovation or reformulation.

In the **Federal Register** of May 27, 2016, we issued final rules updating the Nutrition Facts label and serving size information for packaged foods to reflect new scientific information, including the link between diet and chronic diseases such as obesity and heart disease (see 81 FR 33742, "Food Labeling: Revision of the Nutrition and Supplement Facts Labels"; 81 FR 34000, "Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments"). Updates to the Nutrition Facts label include changes in the individual nutrients that are required to be declared and also changes to the Daily Value of other individual nutrients, reflecting changes in recommended intake levels, based on current science. Because the framework for many of FDA's nutrition labeling regulations is linked to elements in the Nutrition Facts label and serving size regulations, FDA has been planning to update these regulations to align with the updated Nutrition Facts label regulations. These regulations include those for health claims and nutrient content claims (including the implied nutrient content claim "healthy").

The science underlying FDA's new requirements for the Nutrition Facts label and serving size information is also reflected in the recently published *2015–2020 Dietary Guidelines for Americans* (2015–2020 *Dietary Guidelines*) (Ref. 1). The *Dietary Guidelines* are designed for professionals to help all individuals ages 2 years and older and their families consume a healthy, nutritionally adequate diet. The *Dietary Guidelines* are the foundation of federal nutrition guidance and are fundamental in shaping federal policies and programs related to food, nutrition, and health. Specific recommendations in the *Dietary Guidelines* have evolved over time, as nutrition science has advanced. They provide information and perspectives on consumption of foods from various food groups, as well as the intake of specific macronutrients such as fats and sugars, and micronutrients such as vitamins and minerals. The 2015–2020 *Dietary Guidelines* emphasize the importance of eating patterns as a whole, the combination of foods and drinks that people consume over time. The scientific evidence on which the *Dietary Guidelines* are based and the recommendations in the *Dietary Guidelines* will help inform additional updates to FDA's regulations on nutrition-related claims that are permitted on the food label.

A variety of stakeholders from academia and industry, as well as consumers, have also requested that FDA update additional nutrition labeling regulations for nutrient content and health claims, including the implied nutrient content claim "healthy". Some stakeholders have provided specific recommendations on how they believe we should approach such an update. For example, in a citizen petition dated December 1, 2015 (Docket Number FDA–2015–P–4564) ("Kind Citizen Petition"), KIND LLC requested that we make certain changes to existing nutrition claim regulations. A number of these changes specifically related to the nutrient content claim "healthy". With regards to "healthy", the petition requested that we:

- Amend § 101.65(d)(2) so that the term "healthy" or related terms may be used if the food "meets the following conditions for fat, saturated fat, and cholesterol exclusive of the fat and saturated fat contributed to the food product by the following foods, provided that such foods are used in their whole form or have been processed in such a way that did not materially degrade their nutritional value: Fruits, vegetables, nuts, seeds, legumes, whole grains, and seafood; and the food meets the following conditions for other nutrients;"
- Amend § 101.65(d) (pertaining to general nutritional claims) to "clarify that a labeling claim that a food is useful in maintaining healthy dietary practices is an implied nutrient content claim only if the claim is immediately adjacent to an implicit claim or statement about a nutrient";
- Amend § 101.65(b) (pertaining to label statements that are not implied claims) to "clarify that a statement that claims that a food is useful in maintaining healthy dietary practices and that does not appear immediately adjacent to an explicit or implicit claim or statement about a nutrient is generally not an implied nutrient content claim, but is instead a dietary guidance statement"; and
- While the rulemakings to amend § 101.65 are pending, issue a guidance document to "clarify that a statement about the usefulness of a food, or a category of foods, in maintaining healthy dietary practices is a dietary guidance statement that is not subject to the requirements in FDA's nutrient content claim regulations unless it is an implied nutrient content claim because it is immediately adjacent to an explicit or implicit claim or statement about a nutrient".

See Kind Citizen Petition at pgs. 2–5. The petitioner stated that our existing regulatory scheme "limits the ability of food producers to tell consumers that products containing certain foods—such as nuts, whole grains, seafood, fruits, and vegetables—are healthy, even though they are currently recommended as key components of a healthful diet" (Kind Citizen Petition at pg. 5). The petitioner said that its request would "make FDA's regulatory regime consistent with current federal dietary recommendations (as is required by law), consistent with current scientific evidence about the health benefits of certain foods, and would significantly benefit the public health by ensuring that consumers fully understand the dietary value of foods available for purchase" (id.).

The petitioner asserted that current federal dietary recommendations encourage dietary patterns that are rich in nuts, whole grains, legumes, seeds, fruits, vegetables, and seafood (id. at pgs. 10–14) and that current science also recognizes the health benefits of consuming nutrient-dense foods (id. at pgs. 14–18). The petitioner also asserted that dietary recommendations and scientific evidence now focus on the quality or types of dietary fat consumed instead of reducing total fat consumption (id. at pgs. 18–19).

Thus, the petitioner described its requested changes and actions as being necessary to "ensure that FDA's requirements are consistent with current federal dietary recommendations and with the most recent scientific evidence, which is essential in providing uniform federal dietary guidance to consumers" (id. at page 20).

II. Other Issues for Consideration

We invite interested persons to comment on the petitioner's requests, including the use of the term "healthy" as a nutrient content claim in the labeling of human food products; and when, if ever, the use of the term "healthy" may be false or misleading. We are particularly interested in responses to the following questions:

- Is the term "healthy" most appropriately categorized as a claim based only on nutrient content? If not, what other criteria (*e.g.*, inclusion of foods from specific food categories) would be appropriate to consider in defining the term "healthy" for use in food labeling?
- If criteria other than nutrient content (*e.g.*, amount of whole grain) are to be included in the definition of the term "healthy," how might we determine whether foods labeled "healthy" comply with such other criteria for bearing the claim?
- What types of food, if any, should be allowed to bear the term "healthy?" Should all food categories be subject to the same criteria? Please provide details of your reasoning.
- Is "healthy" the best term to characterize foods that should be encouraged to build healthy dietary practices or patterns? What other words or terms might be more appropriate (*e.g.*, "nutritious")? We encourage submission of any studies or data related to descriptors used to communicate the overall healthfulness of a food product.
- What nutrient criteria should be considered for the definition of the term "healthy?" Should nutrients for which intake is recommended to be limited be included? Should nutrients for which intake is encouraged continue to be included?
- If nutrients for which intake is encouraged are included in the definition, should these nutrients be restricted to those nutrients whose recommended intakes are not met by the

general population, or should they include those nutrients that contribute to general overall health? Should the nutrients be intrinsic to the foods, or could they be provided in part—or in total—via fortification? Please provide details of your reasoning and provide any supportive data or information.

- Are there current dietary recommendations (*e.g.*, the *Dietary Guidelines for Americans*) or nutrient intake requirements, such as those described in the final rule updating the Nutrition Facts label (see 81 FR 33742; May 27, 2016) or those provided by the Institute of Medicine (IOM) in the form of Dietary Reference Intakes (DRI) (*http://www.nationalacademies.org/hmd/Activities/Nutrition/SummaryDRIs/DRI-Tables.aspx*), that should be reflected in criteria for use of the term "healthy?"
- What are the public health benefits, if any, of defining the term "healthy" or other similar terms in food labeling? Please include any data or research related to public health benefits in your reasoning.
- What is consumers' understanding of the meaning of the term "healthy" as it relates to food? What are consumers' expectations of foods that carry a "healthy" claim? We are especially interested in any data or other information that evaluates whether or not consumers associate, confuse, or compare the term "healthy" with other descriptive terms and claims.
- Would this change in the term "healthy" cause a shift in consumer behavior in terms of dietary choices? For example, would it cause a shift away from purchasing or consuming fruits and vegetables that do not contain a "healthy" claim and towards purchasing or consuming processed foods that bear this new "healthy" claim?
- How will the food industry and consumers regard a change in the definition of "healthy?"
- What would be the costs to industry of the change?

Please provide supporting data, consumer research, and other information to support your comments and responses to these questions.

III. References

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

1. U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015–2020 Dietary Guidelines for Americans, 8th Edition, December 2015, available at *http://health.gov/dietaryguidelines/2015/guidelines/*.

Dated: September 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–23365 Filed 9–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 234

[Docket No. FR–5715–P–01]

RIN 2502–AJ30

Project Approval for Single-Family Condominiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement HUD's authority under the single-family mortgage insurance provisions of the National Housing Act to insure one-family units in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project. The rule would codify requirements for Direct Endorsement lenders to meet in order to be approved for the Direct Endorsement Lender Review and Approval Process (DELRAP) authority for condominiums, and basic standards that projects must meet to be approved as condominiums in which individual units would be eligible for mortgage insurance, as well as particular cases such as Single-Unit Approvals and site condominiums. The rule provides a method by which certain approval standards could be varied efficiently to meet market needs while providing for public comment where appropriate. Currently, single-family condominium project approval is provided under HUD's Condominium Project Approval and Processing Guide and related Mortgagee Letters.

Condominiums under this rule are distinct from condominiums in which the project has a blanket mortgage insured by HUD.

DATES: *Comment due date:* November 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Prior Authority—Section 234 of the National Housing Act

Prior to 2008, HUD's statutory authority to insure mortgages on condominium units came from section 234 of the National Housing Act (12 U.S.C. 1715y) (the Act). Section 234 required that: The structure is or has been covered by a mortgage insured under another section of the Act; the mortgagor is acquiring or has acquired a family unit covered by a section 234 insured mortgage for his own use and occupancy; and the mortgagor will not own more than four one-family units covered by section 234 insured mortgages (Pub. L. 87–70, June 30, 1961, 75 Stat. 161). Subsequent amendments allowed for a variety of project configurations in addition to vertical buildings (Pub. L. 97–35, August 13, 1981, 95 Stat. 416); added an 80 percent mortgagor occupancy requirement; and removed the 4-unit limitation on ownership (Pub. L. 98–181, November 30, 1983, 97 Stat. 1209).

The Housing and Economic Recovery Act of 2008, Public Law 110–289, July 30, 2008 122 Stat. 2654 (HERA) was enacted July 30, 2008 and added a requirement to section 234(c) that the project have a blanket mortgage insured by the Secretary under section 234(d). HUD does not currently insure new mortgages on condominium units in projects with blanket mortgages. Although, there are existing mortgages that were previously insured under section 234, most condominium projects are not structured in this manner.

B. HERA of 2008 and Section 203 of the National Housing Act

Section 2117 of Division B, Title I, Subtitle A of HERA, the FHA Modernization Act of 2008, amended the National Housing Act to provide authority for HUD to insure condominium units under the single-family program authorized by section 203 of the National Housing Act, 12 U.S.C. 1709. Specifically, section 2117 amended the definition of "mortgage" in section 201 of the Act (12 U.S.C. 1707), which definition also applies to section 203 of the Act (12 U.S.C. 1709), to include a mortgages on a one-family unit in a multifamily project, and an undivided interest in the common areas and facilities which serve the project. The HERA changes placed all authority for mortgage insurance of projects with blanket mortgages in section 234 of the Act, and units in other condominium projects under section 203 of the Act.

C. Current Regulations and Guidance

Project approval for projects with FHA-insured blanket loans are governed according to the requirements of section 234 of the Act, 24 CFR part 234, and other applicable policy guidance, including the Condominium Project Approval and Processing Guide (the Guide).

II. This Proposed Rule

This proposed rule would codify basic regulatory requirements for condominium project approval, in addition to the current requirements under 24 CFR part 203. These requirements would be more flexible, less prescriptive, and more reflective of the current market than the requirements in the current section 234 program. The intent of this rule is to regulate where necessary to ensure financial soundness and project viability, but to be flexible where possible, and retain the ability to be responsive to the market.

The rule proposes a new 24 CFR 203.8 that would codify DELRAP for condominiums. While a similar process is currently outlined in chapter 1.2 of the Guide, this rule is proposing some changes based on HUD's experience. As now proposed, in order to participate in condominium project approval, a mortgagee would have to be granted DELRAP authority, and in order to be granted DELRAP authority, a mortgagee would have to be unconditionally approved for the Direct Endorsement program as provided in § 203.3, and additionally have the following indicia of capability in underwriting condominium mortgages specifically: Staff with at least one year experience in underwriting mortgages on condominiums and/or condominium project approval; having originated not less than 10 condominium loans in HUD-approved projects; having an acceptable quality control plan that includes provisions specific to DELRAP; and ensuring that only staff members with the required experience participate in condominium project approval using DELRAP (proposed § 203.8(b)).

Under proposed § 203.8(b)(2) and (b)(3), mortgagees would initially be granted conditional DELRAP authority upon providing a notice of their intent to participate in DELRAP. While conditionally approved, a mortgagee must submit all recommended Condominium Project approvals and denials to FHA for review, and may only proceed upon notification of HUD's agreement with the recommendation. Once the mortgagee has completed at least 5 DELRAP reviews to HUD's satisfaction, the mortgagee will be granted unconditional DELRAP authority and may approve condominium projects in accordance with HUD's requirements.

Section 203.8(c) would provide for HUD's review of a DELRAP mortgagee's performance. HUD will monitor the performance on an ongoing basis, and, if there are no material deficiencies found, HUD will select a sample of project approvals, denials, or recertifications for post-action review. If the review shows deficiencies and the mortgagee has unconditional DELRAP authority, the mortgagee may be returned to conditional status. If additional reviews continue to show deficiencies, the mortgagee authority to participate in DELRAP may be terminated, or other action taken against the staff reviewer, under proposed § 203.8(d), which includes any action available under 24 CFR 203.3(d).

Sections 203.8(d) and (e) provide for termination of DELRAP authority and requests for reinstatement of terminated authority. HUD may immediately terminate DELRAP authority or take actions under § 203.3(d) if the mortgagee violates any of the requirements and procedures established by the Secretary for mortgagees approved to participate in DELRAP, the Direct Endorsement program, or the Title II Single Family mortgage insurance program; or if other good cause exists; or for unacceptable performance. Actions under 24 CFR 203.3(d) include probation of Direct Endorsement lenders subject to conditions including additional training and changes to the mortgagee's quality control plan, or termination of Direct Endorsement approval. Termination of DELRAP authority would be effective upon the mortgagee's receipt of HUD's notice advising of the termination. Any termination of DELRAP authority is a separate action from an action for withdrawal of mortgagee approval by the Mortgagee Review Board, which could also be initiated by HUD.

Under proposed § 203.8(e), a mortgagee whose DELRAP authority is terminated under this section may request reinstatement if the mortgagee's

DELRAP authority has been terminated for at least 6 months. The request must address the eligibility criteria for participation in DELRAP under this rule as well as a corrective action plan, along with evidence that the mortgagee has implemented the corrective action plan. Following the request, HUD would be able to grant Conditional DELRAP authority if the mortgagee's application is complete and the Commissioner determines that the underlying causes for the termination have been satisfactorily remedied. The mortgagee would be required to complete successfully at least 5 test cases in accordance with § 203.8(b)(3) in order to receive unconditional DELRAP authority.

The rule proposes a minor change to current § 203.17(a)(1), which section defines "mortgage" in accordance with section 201 of the National Housing Act (12 U.S.C. 1707), but has not been updated to account for the addition of mortgages on one-family units in multifamily projects and an undivided interest in the common areas and facilities. Nor does the current regulatory definition include detached and semi-attached units. By revising this section to cross-reference section 201 of the National Housing Act rather than attempting to summarize it, HUD avoids the need to update this definition each time the statutory definition is revised, and eliminates confusion that may be caused by differences between the statutory language and HUD's regulation.

This rule proposes to revise currently reserved § 203.43b to include the regulations pertaining to the eligibility of projects for approval and for condominium units in approved projects for mortgage insurance.

Section 203.43b(a) would provide definitions of the terms Condominium Project, Condominium Unit, Rental for Transient or Hotel Purposes, Condominium Association, Single-Unit Approval, and Site Condominium under part 203. While Condominium Unit refers to a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities that serve the project, the term Condominium Project refers to the project as a whole in which such units are located. The term Rental for Transient or Hotel Purposes cross-references to section 513(e) of the Act (12 U.S.C. 1731b(e)). Single-Unit Approval means approval of a loan on a single unit in a project that is not approved as a condominium. The term Site Condominium means a single family totally detached dwelling (which does not have a shared garage or any other attached building, including such improvements as archways, or breezeways), which is encumbered by a declaration of condominium covenants or condominium form of ownership, and which consists of the entire structure as well as the site and air space and is not considered to be a common area or limited common area.

Section 203.43b(b) would state that a mortgage on a Condominium Unit shall be eligible for insurance under section 203 of the National Housing Act if it meets the requirements of 24 CFR part 203, subpart A, except as provided for in § 203.43b. Section 203.43b(c) would further specify that the unit, to be eligible for insurance under § 203.43b, must be located in a Condominium Project approved by HUD or DELRAP mortgagee approved under 24 CFR 203.8, or meet the additional requirements for approval as a Site Condominium or Single-Unit Approval.

Under this rule, HUD and DELRAP lenders will not approve proposed or under construction projects; however, HUD or DELRAP lenders may approve legal phases of projects or completed projects. The condominiums that may be approved under this rule would be those where the work on the project or legal phase, including buildings and infrastructure of the project or legal phase, is fully complete. HUD would expect that all the requirements of local law would be met, including review and approval of the project or legal phase by the local jurisdiction and recordation in the property records of the condominium plat or development plan, as applicable (see §§ 203.43b(d)(4) and (d)(5)).

Section 203.43b(d) would state the basic condominium project approval eligibility requirements. The project or legal phase must be complete as to construction of the buildings and infrastructure. In addition, any legal phases must be contiguous (in a vertical building) or must consist of adjoining or contiguous homes (in a development of detached or semi-detached homes), and the units or buildings and infrastructure in each phase must be constructed and be complete. The project or legal phase must also be primarily residential in nature (although a certain amount of floor space may be set aside for commercial activities, as stated at § 203.43b(d)(6)(vii)) and not intended for transient or hotel purposes; must consist solely of one-family units, which is a statutory requirement under 12 U.S.C. 1707(a); and must be in full compliance with all Federal, State, and local laws with respect to zoning, Fair Housing, and accessibility for persons with disabilities, including but not limited to the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, where relevant. Infrastructure includes the project's streets, storm water management, water and sewage systems, and utilities, along with the project's common elements and amenities, such as parking lots, community buildings, swimming pools, golf courses, playgrounds, and any similar items, called for in the project or legal phase.

In addition to these general requirements, condominiums must meet further approval requirements as provided by HUD. Some of these requirements are underwriting matters or existing legal requirements such as the nature of the real estate title or leasehold; unit owner control of the Condominium Association; insurance coverage; and statements regarding financial condition, special assessments, property conditions, and pending legal actions. These are the types of matters that HUD routinely considers when determining eligibility for FHA programs.

In addition, the rule would implement some regulatory standards specific to condominiums, but seeks to do so in a way that is flexible and responsive to the market while continuing to involve the public in the rulemaking process. Section 203.43b(d)(6)(vii) would provide for HUD to set a standard for the maximum commercial/nonresidential space within a range from 25 percent to 60 percent of the total floor area. Mixed-use developments are a way to integrate housing, land-use, economic and workforce development, as well as transportation and infrastructure development. However, the agency believes that allowing greater than 50 percent commercial/nonresidential space may have a negative impact on the residential character of the project; therefore, HUD would not expect in the near future to allow greater than 50 percent commercial/nonresidential space. HUD may want to allow less based on the experience it gains with this program.

Under 12 U.S.C. 1709(y)(2),[1] either HUD or the DELRAP lender, at the option of the requester, may grant an exception to the standard regarding the maximum percentage of commercial/

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[1] As amended by the Housing Opportunity Through Modernization Act of 2016, Public Law 114–201 (approved July 29, 2016).

nonresidential space set by HUD. In determining whether to grant such an exception, factors relating to the economy for the locality in which the condominium project is located, or specific to the project, including the total number of family units in the project, shall be considered. A DELRAP lender, in determining whether to grant a requested exception, shall follow any procedures that HUD may establish.

Within this range, in order to remain flexible and responsive to the market, HUD would be able to vary by notice the percentage of commercial/nonresidential space allowed or required. If HUD decides to vary the upper and lower limits of the range itself, the rule provides a procedure that includes notice and an opportunity for public comment. This notice and comment procedure is stated at § 203.43b(e) of this proposed rule.

Sections 203.43b(d)(6)(viii) and (d)(6)(ix) would treat acceptable maximum percentages of units with FHA-insured mortgages and acceptable minimum levels of owner occupancy, respectively, in a similar manner, with overall ranges between 25 and 75 percent, within which HUD would be able to vary the amount by notice. The owner occupancy percentage includes both principal and secondary residences (or units that have been sold to purchasers who intend to occupy them as primary or secondary residences). Secondary residences are defined at § 203.18(f)(2), mean dwellings (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

While having too few owner occupants can detract from the viability of a project, requiring too many can harm its marketability. HUD's current standard of 50 percent has worked in the recent market; however, HUD specifically invites comment on this issue. For these elements as well, the procedure to change the upper and lower limits of the range itself by notice with an opportunity to comment would apply.

Section 203.43b(d)(6)(x) addresses phasing of a project. While HUD understands that developing projects in phases as funding is secured may be necessary in some cases, HUD is concerned about the risk of approving phases in cases where failure to complete a phase could result in the failure of the project as a whole. Therefore, only legal phasing will be allowed. All phases must be contiguous and constructed so that they are separately sustainable, meet the requirements of § 203.43b(d), and be capable of being occupied even if a subsequent phase were to be delayed or even fail to be completed.

Section 203.43b(d)(6)(xi) addresses reserve accounts. Per HUD's usual practice, this rule would require that the reserve account is funded with at least 10 percent of the monthly unit assessments, unless a lower amount is deemed acceptable by HUD based on a reserve study completed not more than 24 months before a request for a lower amount is received.

Section 203.43b(d)(6)(xii) permits HUD to set requirements regarding such other matters that may affect the viability or marketability of the project or its units. Additionally, under proposed § 203.43b(f), the Secretary may grant case by case exceptions to the regulatory requirements under § 203.43b(d)(6). This is in accordance with the discretionary nature of the Secretary's authority to insure mortgages under 12 U.S.C. 1709(a).

Proposed 203.43b(g) provides the basic mechanism for condominium approval. Condominiums would be submitted to either HUD or a DELRAP lender, and, if all eligibility criteria are met, would be approved and placed on the list of HUD-approved condominium projects. Under § 203.43b(g)(3), unless otherwise specified in writing by HUD, approval would be for a period of 3 years from the date of placement on the approved list; HUD may rescind approval at any time if the project fails to comply with any requirement for approval.

Proposed 203.43b(g)(4) provides for renewal of a project approval. The condominium could request renewal, by submitting a request for recertification no earlier than 6 months before, and no later than 6 months after, expiration of the approval. As long as the request is timely, it may be supported by updating previously submitted information, rather than by resubmitting new information. However, if the request is not submitted by the end of 6 months after the expiration of approval, a complete, new approval application would be required. HUD will specify the format for the request.

Proposed 203.43b(h) would provide overall parameters for Single-Unit Approval, that is, approvals of individual units in projects that are not otherwise approved to participate. A mortgage secured by a Single-Unit Approval may be acceptable if the percentage of such mortgages insured in a project is within an amount determined by the Secretary to be necessary for the viability and marketability of the project, which percentage, within the range established in this rule, will be specified by HUD by notice. In addition, the unit may only be eligible for approval on a Single-Unit Approval basis if it is not located in a Condominium Project that is approved under this section or has been subject to a negative determination for significant issues that affect the viability of the project. The project must be complete (*i.e.*, not proposed, under construction, or subject to further phasing or annexation), including all common elements and those of the master association. The project must have a percentage of units sold within a range stated in the rule, with the specific percentage to be established by HUD through notice. Finally, the Single-Unit Approval must be in a project in which no single entity owns more than the percentage of units in the project that is within the range stated in rule, with the specific percentage to be established by HUD through notice. If HUD determines it is necessary to change the upper and lower limits of the ranges, it will issue a notice for comment.

Proposed § 203.43b(i) would govern site condominiums. Insurance and maintenance costs must be the sole responsibility of the owner, and any common assessments collected must be restricted to use solely for amenities outside of the footprint of the individual site.

Condominium units that meet the statutory requirements of section 203(k) of the Act, 12 U.S.C. 1709(k), are eligible for rehabilitation loans. Section 203(k) and the implementing HUD regulation at 24 CFR 203.50(a)(1)(i) provides for rehabilitation loans for 1–4 unit structures that are primarily residential. A rehabilitation loan for an individual condominium unit under 203(k) necessarily excludes the building exterior and common elements, which are the responsibility of the Association, so that the 203(k) loan would be for the portion of the structure that is inside the unit including the installation of firewalls in the attic of a unit (proposed 24 CFR 203.50(a)(1)(iv)).

In accordance with HUD's longstanding policy for 203(k) rehabilitation loans secured by condominium units, this proposed rule would add a provision stating that the maximum loan amount is 100 percent of the after-improvement value of the unit for any Condominium Unit. (proposed 24 CFR 203.50(f)(3)).

Finally, the proposed rule would address the continued applicability of 24 CFR part 234, which now applies, along with section 234 of the Act (12 U.S.C. 1715y) and other HUD issuances specific to part 234, only in cases where projects have blanket mortgages insured by HUD. This proposed rule adds a new § 234.2, entitled "Savings clause," which clarifies that part 203 and this section apply in all cases except where the project has a blanket mortgage insured under section 234(d) of the Act, in which case section 234 of the Act, 24 CFR part 234, and other HUD issuances (including HUD Handbook 4265.1, Home Mortgage Insurance Condominiums; Chapter 11 of HUD Handbook 4150.1, Valuation Analysis for Home Mortgage Insurance and any Mortgagee Letters that discuss section 234 requirements) apply.

Requests for Public Comment

(1) HUD seeks public comment specifically on the proposed requirement in § 203.43b(d)(4) that the project or legal phase be "complete and ready for occupancy, including completion of the infrastructure of the project or legal phase, and not subject to further rehabilitation, construction, phasing, or annexation, except to the extent that approval is sought for legal phasing in compliance with the requirements of paragraph (d)(6)(x) of this section." Given that HUD approval of a fully completed project would not require an environmental review, while continuing the current practice of approving proposed or under construction projects could require environmental review, HUD seeks comments on how this rule would affect industry participation in the program.

(2) HUD seeks public comment specifically on whether there is some other indicia of appropriate experience that could be used rather than, or in addition to, experience in underwriting condominium mortgages and/or condominium approval, or the number of loans originated; for instance, is there another type of experience that could provide an indication of competency in condominium project approval, and how would it provide such indication?

(3) HUD seeks public comment specifically on the ranges this rule proposes to establish, within which HUD may set the specific requirements for percentages of Single-Unit Approvals, commercial space, FHA insured units, and owner-occupied units. HUD seeks comment on whether this range approach is the best approach, and whether the ranges proposed are appropriate. The agency would be interested in any data or evidence that could be provided either that the ranges, as proposed, are appropriate, or that a different set of ranges would be more appropriate or would yield additional benefits.

(4) HUD seeks public comment specifically on the proposed revision of the period of project approval from 2 to 3 years, including whether there are any costs and benefits that would be associated with a shorter or longer timeframe.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

Information collection	Number of respondents	Frequency of response	Total annual responses	Hours per response	Total burden hours
Package Preparation	15,000	1	15,000	2	30,000
Package Review	15,000	1	15,000	1	15,000
Quality Assurance	15,000	.2	3,000	1	3,000
Totals	45,000	2.2	33,000	4	48,000

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5563) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947;

and

Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room, 451 7th Street SW., Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action," as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

The proposed rule establishes regulations concerning three aspects of the Direct Endorsement Lender Review and Approval Process (DELRAP) for single family condominiums. First, the rule establishes parameters regarding which kind of condominium projects are eligible for approval for the purpose of single unit mortgage insurance through the Department of Housing and Urban Development. Flexible approval standard requirements, will allow for projects to efficiently meet market needs. Second, the rule changes the frequency with which approved projects need to be reapproved from two years to three years. Third, the rule changes the standards for condominium DELRAP mortgagees in order to require minimum experience and quality control levels.

The rule could result in multiple transfers: Among lenders, among condominium projects; and to FHA. The benefit of the proposed rule is to provide flexibility in implementation providing competent lenders a role in project approval. Costs arise from any administrative burden imposed upon the private sector or lost opportunities resulting from condominium project requirements. Many provisions of the rule (Single-Unit Approval, flexible standards, a longer interval for condo approvals, and exceptions for environmental review) will reduce or eliminate the compliance costs of the rule. The Regulatory Impact Analysis discusses but does not monetize many of the difficult to evaluate impacts. Monetized annual impacts of the rule include the estimated paperwork burden of $2.1 million. HUD finds that increasing the periodicity of approval from 2 to 3 years reduces the costs of approval by $1 million annually.

Greater detail and analysis than this brief summary can provide is available in the full initial Regulatory Impact Analysis (RIA) prepared for this rule, which is available for public inspection in the Regulations Division and may be viewed online at *www.regulations.gov,* under the docket number above. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule establishes regulations for single-family mortgage insurance of condominium units pursuant to 12 U.S.C. 1707 and 1709. However, HUD has been providing mortgage insurance for this purpose pursuant to statute and the Condominium Approval and Processing Guide published in 2011. While this rule makes some adjustments to the provisions on eligibility for DELRAP participation, and many DELRAP lenders are small entities, this rule is not so different as to create a significant economic impact.

A. Industry Sector Data Analysis

Industries involved in mortgage origination and lending. Mortgage originators (reverse, purchase, refinance) include both brokers and lenders. The firms that participate in lending are divided among five primary groups: Banks, thrifts, mortgage banks, credit unions, and mortgage brokers. A precise description of these individual industries is as follows:

Commercial Banking (NAICS 522110)

Entities primarily engaged in accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included.

Savings Institutions (NAICS 522120)

Entities primarily engaged in accepting time deposits, making mortgage and real estate loans, and investing in high-grade securities. Savings and loan associations and savings banks are included in this industry.

Credit Unions (NAICS 522130)

Entities primarily engaged in accepting members' share deposits in cooperatives that are organized to offer consumer loans to their members.

Real Estate Credit (NAICS 522292)

Entities primarily engaged in lending funds with real estate as collateral. This includes: Construction lending, farm mortgage lending, Federal Land Banks, home equity credit lending, loan correspondents (*i.e.,* lending funds with real estate as collateral), mortgage banking (*i.e.,* nondepository mortgage lending), and mortgage companies.

Mortgage and Nonmortgage Loan Brokers (NAICS 522310)

Entities primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis.

During the 1980s and 1990s, mortgage lending evolved from the traditional portfolio lender model where single companies (bank and thrift depositories) performed all steps in the mortgage process—making, closing, funding, servicing, and holding the loan—to a more specialized industry of originators, funding lenders, warehouse lenders, separate secondary market buyers of loans, and servicers.[2] A major driving force behind the unbundling of the mortgage functions, as well as the rise of mortgage brokers, has been the rise and eventual dominance of mortgage securitization, which separated the provision of capital from loan origination and servicing. Brokers originate loans mainly for wholesale lenders.

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[2] Michael G. Jacobides, "Mortgage Banking Unbundling: Structure, Automation, and Profit," *Mortgage Banking,* January 2001, pages 28–40.

Studies of the mortgage brokerage industry do not find there to be high fixed costs for firms. There is little evidence of economies of scale in mortgage origination but there is some evidence that brokers are more efficient originators than mid-size and large lenders. Olson (2002) reports that his surveys find no economies of scale in mortgage production—a one-person firm produced as many loans per employee as a larger firm. Olson regards brokers as low-cost, highly-competitive firms, vigorously competing with one another and with little opportunity to earn above-normal profits.[3]

B. Current State of the Market

In 2014, 7,062 institutions reported data on nearly 10 million home mortgage applications, resulted in 6 million originations. This is down from 8.7 million originations in 2013. There was an historically high share of loans originated outside the federally insured banking system by institutions such as independent mortgage companies and credit unions, not subject to Community Reinvestment Act (Federal Reserve, 2015).[4]

The share of mortgages originated by non-depository, independent mortgage companies has increased sharply in recent years. Small banks and credit unions have also increased market shares over the past decade. The fraction of originations attributable to large banks and their nonbank subsidiaries diminished. Banks and thrifts accounted for 45 percent of all reported mortgage originations; independent mortgage companies 40 percent, credit unions over 9 percent, affiliates, remainder (Federal Reserve, 2015).

In 2014, 7,062 reporting institutions, 4,118 banks and thrifts, 3,367 were small (assets less than $1 billion), 1,984 credit unions, 139 mortgage companies affiliated with depositories (banks and credit unions), 821 independent mortgage companies. In 2014, small banks and credit unions were much more likely to originate conventional higher-priced loans than large banks and mortgage companies. Small banks and credit unions originated about 18 percent of conventional home-purchase loans, but accounted for 59 percent of higher-priced conventional home-purchase loans (Federal Reserve, 2015).

C. Size Standards

SBA's size standards (2016) define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS). For most industries considered, a "small" business is defined by revenue. Size standards are based on another criterion if revenue is not suitable, either because prices are volatile or there are more appropriate measures.

According to the U.S. Census Bureau, revenue for Finance, Insurance and Real Estate includes commissions and fees from all sources, rents, net investment income, interest, dividends, royalties, and net insurance premiums earned. SBA considers a real estate credit small if its annual revenue is no greater than $38.5 million. A mortgage broker is defined as small if its revenue is no greater than $7.5 million.

For three of the industries considered in this analysis (Commercial Banks, Savings Institutions, and Credit Unions), the SBA definition of small is by the dollar amount of assets ($550 million). Assets include: Cash, interest-earning loans, leases, securities, real estate, letters of credit, loans to other banks, any other financial assets, and intangible assets.

The diversity of size standards makes it difficult to perform a precise analysis of the ubiquity small firms. This difficulty is compounded when sources of business statistics do not report their data by SBA's size standards and that industry definition may not be equivalent. When an exact correspondence is not possible, HUD will, by necessity, use an alternative size standard. For example, asset data is collected by the Federal Deposit Insurance Corporation (FDIC) for Commercial Banks and Savings Institutions. FDIC uses $1 billion as a means to categorize banks and thrifts, which is more inclusive than SBA's definition.

D. Prevalence of Small Firms

Estimating the prevalence of small firms in making FHA-insured condominium loans requires combining statistics from different sources.

FHA INSURED CONDOMINIUM LOANS BY LENDER TYPE *

Type of lender	Firms (% of number)	Forward condo loans (% of number of loans)	All condo loans *** (% of number of loans)	All condo loans (% of dollar volume)
Bank (Total)	30	20	19	7
*Small Bank***	*13*	*3*	*3*	*1*
Large Bank	*17*	*17*	*16*	*6*
Mortgage Company	66	79	79	93
Affiliated	*1*	*0*	*0*	*0*
Independent	*65*	*79*	*79*	*93*
Credit Union	3	1	1	0
Total ****	100	100	100	100

* Source: Single Family Data Warehouse 6/1/14–5/31/16.
** Defined as having assets no greater than $1 Billion.
*** All = forward + HECM.
**** Percentages by lender type are rounded and so may not sum to 100.

The table provides us with some insight concerning the types of firms that are involved in making FHA-condo loans. The predominant originators by any measure are mortgage companies. Independent mortgage companies make

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[3] Olson, David. 2002. "Report of David Olson." Report submitted to U.S. District Court, Court of Minnesota in Civil Case No. 97–2068 DWF/SRN: Lonnie and Danny Glover (Plantiffs) vs. Standard Federal Bank, ABN AMRO Mortgage Group, Inc. and Heartland Mortgage Corporation (Defendants).

[4] *http://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.*

79 percent of the loans and 93 percent of the dollar volume. The largest independent mortgage company, Quicken Loans, accounts for over 5.5 percent of all condo loans. In this table, "banks" are equivalent to commercial banks and savings institutions. Small banks (assets of no greater than $1 billion) represent a small proportion of firms (13 percent) and an even smaller percentage of condo loans (3 percent).

Given the dominance of mortgage companies, an estimate of the small companies originating mortgage loans is essential to a good economic analysis. HUD has data concerning the total FHA-insured loans made by the firms also involved in the condo business. An estimate of the total loans can be arrived at by dividing FHA loans by FHA's market share. Doing so will lead to estimates that are inaccurately high for some and too low for others. On average the estimate will be correct. In the last three years (2013–2015), FHA's share of the dollar value of home purchases as varied around 15 percent.

The estimated value of loans can be converted to an estimated revenue by multiplying by an appropriate percentage. Estimates of broker income vary between 1 and 3 percent. We use the lower to arrive for a more expansive count of small business. Of all condo lenders, 31 percent of the firms are small mortgage companies (earning less than $7.5 million). These small mortgage companies make 5 percent of all condo loans and 2 percent of the dollar volume.

We counted a total of only 39 credit unions over a two-year period. Credit Unions are not active in making condo loans. The proportion of loans and dollar value made by credit unions is very close to 0 percent. Thus, accuracy in estimating the small/large percentage is not as important as for other types of lenders. We will assume that all credit unions are small because the average asset amount is significantly below $1 billion (Monthly Credit Union Estimates, May 2016).

Small firms constitute 47 percent of originators of FHA-insured condo loans, 9 percent of all condo loans, and 3 percent of the dollar volume.

ESTIMATES OF PREVALENCE OF SMALL LOAN ORIGINATORS INVOLVED IN FHA CONDO LENDING

	Small firms (%)	Number of condo loans (%)	Dollar volume of condo loans (%)
Banks	13	3	1
Mortgage Companies	31	5	2
Credit Unions	3	1	0
Total	47	9	3

E. Economic Impact

Approximately half of the firms engaged in making FHA-insured condominium loans are estimated to be small. This share of small firms could change depending upon the regulatory impact of the rule and whether that impact is disproportionate. Although small business constitutes 47 percent of all firms, they originate only 9 percent of all loans, making it more difficult to pass on any costs of origination to borrowers. Reducing (raising) fixed costs benefits (harms) small firms disproportionately more than large ones.

One aspect of the rule that could have a negative and disproportionate impact on small firms are any requirements to participate in the DELRAP program. While many of the requirements will be met with little difficulty by already-approved lenders, requirements that are related to the level of business activity would place a relatively higher burden on small firms. To be qualified for Direct Endorsement authority, a mortgagee must satisfy the following characteristics: Possess at least one of year experience in condo loans; have made at least 10 FHA approved condo loans; possess a quality control plan; and participating staff is limited to those with prior experience. All of these requirements would be easier to meet by larger firms with greater capacity. Nonetheless, small firms that have at least occasional experience should be able to satisfy the requirements without undue burden.

Other elements of the rule lift regulatory burdens. First, allowing Single-Unit Approval enables small lenders business opportunities without the cost of seeking approval for an entire condominium project.[5] Second, by providing that only completed projects may be approved, this rule eliminates the need for HUD to require an environmental review from lenders as a condition of approval. This change will benefit small firms that are less likely to retain specialists. Although some components of the rule raise the cost of compliance for small firms, other elements will expand their opportunities and allow them to spread the compliance costs over a greater number of loans. Also, participation in condominium insurance, like HUD's other mortgage insurance programs, is purely voluntary.

Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR parts 203 and 234 is 14.117.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

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[5] As noted in the accompanying Regulatory Impact Analysis, the average cost of a project DELRAP approval would be $1,250. Extending the approval period to 3 years reduces this cost by approximately one-third for all lenders.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

For the reasons stated in the foregoing preamble, HUD proposes to amend 24 CFR parts 203 and 234 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements and Underwriting Procedures

■ 2. Add § 203.8 to read as follows:

§ 203.8 Approval of mortgagees for Direct Endorsement Lender Review and Approval Process (DELRAP).

(a) *General.* Each mortgagee that chooses to participate in the review and approval of Condominium Projects, as set forth in § 203.43b, must be granted authority to participate in the Direct Endorsement Lender Review and Approval Process (DELRAP).

(b) *DELRAP Authority*—(1) *Eligibility.* To be granted DELRAP authority, as described in § 203.43b, a mortgagee must be unconditionally approved for the Direct Endorsement program as provided in § 203.3 and meet the following requirements:

(i) Have staff with at least one year of experience in underwriting mortgages on condominiums and/or condominium project approval;

(ii) Have originated not less than 10 condominium loans in projects approved by the Commissioner;

(iii) Have an acceptable quality control plan that includes specific provisions related to DELRAP; and

(iv) Ensure that only staff members meeting the above experience requirements participate in the approval of a Condominium Project using DELRAP authority.

(2) *Conditional DELRAP Authority.* Mortgagees will be granted Conditional DELRAP authority upon provision of notice to the Commissioner of the intent to use DELRAP. Mortgagees with Conditional DELRAP authority must submit all recommended Condominium Project approvals, denials and recertifications to FHA for review. If FHA agrees with the mortgagee's recommendation, it will advise the mortgagee that it may proceed with the recommended decision on the Condominium Project.

(3) *Unconditional DELRAP Authority.* Mortgagees will be granted unconditional DELRAP authority after completing at least five (5) DELRAP reviews to the satisfaction of the Commissioner and may then exercise DELRAP authority to approve projects in accordance with requirements of the Commissioner.

(c) *Reviews.* HUD will monitor a mortgagee's performance in DELRAP on an ongoing basis.

(1) If the review shows that there are no material deficiencies, subsequent project approvals, denials or recertifications may be selected for post-action review based on a percentage as determined by the Commissioner.

(2) If the review shows that there are deficiencies in the mortgagee's DELRAP performance, the mortgagee may be returned to Conditional DELRAP status.

(3) If additional reviews continue to show deficiencies in the mortgagee's DELRAP performance, the mortgagee's authority to participate in DELRAP may be terminated or other action taken against the mortgagee or responsible staff reviewer.

(d) *Termination of DELRAP Authority.* (1) HUD may immediately terminate the mortgagee's authority to participate in DELRAP or take any action listed in 24 CFR 203.3(d) if the mortgagee:

(i) Violates any of the requirements and procedures established by the Secretary for mortgagees approved to participate in DELRAP, the Direct Endorsement program, or the Title II Single Family mortgage insurance program; or

(ii) If HUD determines that other good cause exists.

(2) Such termination will be effective upon receipt of HUD's notice advising of the termination.

(3) Notwithstanding any provisions of this section, the Commissioner reserves the right to take administrative action, including revocation of DELRAP authority, against any mortgagee and staff reviewer because of unacceptable performance. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(e) *Reinstatement.* A mortgagee whose DELRAP authority is terminated under this section may request reinstatement if the mortgagee's DELRAP authority has been terminated for at least 6 months. In addition to addressing the eligibility criteria specified in paragraph (b)(1) of this section, the application for reinstatement must be accompanied by a corrective action plan addressing the issues that led to the termination of the mortgagee's DELRAP authority, along with evidence that the mortgagee has implemented the corrective action plan. The Commissioner may grant Conditional DELRAP authority if the mortgagee's application is complete and the Commissioner determines that the underlying causes for the termination have been satisfactorily remedied. The mortgagee will be required to complete successfully at least five (5) test cases in accordance with paragraph (b)(2) in order to receive unconditional DELRAP authority as provided in paragraph (b)(3) above.

■ 3. Revise § 203.17(a)(1) to read as follows:

§ 203.17 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part, except § 203.43c, shall have the meaning given in Section 201 of the National Housing Act, as amended (12 U.S.C. 1707).

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■ 4. Add 203.43b to read as follows:

§ 203.43b Eligibility of mortgages on single-family condominium units.

(a) *Definitions.* As used in this part:

(1) *Condominium Association (Association)* means the organization, regardless of its formal legal name that consists of homeowners within a condominium project for the purpose of managing the financial and common-area assets.

(2) *Condominium Project* shall mean the project in which one-family dwelling units are attached, semi-detached, or detached, or are manufactured housing units, and in which owners hold an undivided interest in the common areas and facilities that serve the project.

(3) *Condominium Unit* shall mean real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities that serve the project.

(4) *Infrastructure* means the condominium project's streets, storm water management, water and sewage systems, and utilities, along with the project's common elements and amenities, such as parking lots, community buildings, swimming pools, golf courses, playgrounds, and any similar items, called for in the project or legal phase.

(5) *Rental for Transient or Hotel Purposes* shall have the meaning given

in section 513(e) of the National Housing Act (12 U.S.C. 1731b(e)).

(6) *Single-Unit Approval* means approval of one unit in an unapproved condominium project under paragraph (h) of this section.

(7) *Site Condominium* means a single family detached dwelling (which does not have a shared garage or any other attached building, including such improvements as archways, or breezeways), which is encumbered by a declaration of condominium covenants or condominium form of ownership, and which consists of the entire structure as well as the site and air space and is not considered to be a common area or limited common area.

(b) *Eligibility.* A mortgage secured by a Condominium Unit shall be eligible for insurance under section 203 of the National Housing Act if it meets the requirements of this subpart, except as modified by this section.

(c) *Approval required.* To be eligible for insurance under this section, a Condominium Unit must be located in a Condominium Project approved by HUD or a DELRAP mortgagee approved under § 203.8, or meet the additional requirements for approval as a Site Condominium or Single-Unit Approval.

(d) *Condominium Project Approval: Eligibility Requirements.* To be eligible for Condominium Project approval, the Condominium Project must:

(1) Be primarily residential in nature and not be intended for rental for Transient or Hotel Purposes;

(2) Consist of units that are solely one-family units;

(3) Be in full compliance with all applicable Federal, State, and local laws with respect to zoning, Fair Housing, and accessibility for persons with disabilities, including but not limited to the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.,* where relevant;

(4) Be complete and ready for occupancy, including completion of all the infrastructure of the project or legal phase, and not subject to further rehabilitation, construction, phasing, or annexation, except to the extent that approval is sought for legal phasing in compliance with the requirements of paragraph (d)(6)(x) of this section;

(5) Be reviewed and approved by the local jurisdiction with respect to the condominium plat or similar development plan and any phases; if applicable, the approved plat or development plan must have been recorded in the land records of the jurisdiction; and

(6) Meet such further approval requirements as provided by the Commissioner through notices with respect to:

(i) Nature of title to realty or leasehold interests;

(ii) Control over, and organization of, the Condominium Association;

(iii) Minimum insurance coverage for the Condominium Project;

(iv) Planned or actual special assessments;

(v) Financial condition of the Condominium Project;

(vi) Existence of any pending legal action, or physical property condition;

(vii) Commercial/non-residential space, which must be within a range between 25 and 60 percent of the total floor area (which range may be changed following the procedures in paragraph (d)(6) of this section), with the specific maximum and minimum percentages within that range to be established by HUD through notice, provided that such commercial/non-residential space does not negatively impact the residential use of the project or create adverse conditions to the occupants of individual condominium units.

(viii) Acceptable maximum percentages of units with FHA-insured mortgages, which must be within a range between 25 and 75 percent of the total number of units in the project (which range may be changed following the procedures in paragraph (d)(6) of this section), with the specific maximum percentage of units with FHA-insured mortgages within that range to be established by HUD through notice.

(ix) Acceptable minimum levels of owner occupancy, including units under a bona fide contract to purchase by a purchaser who occupies or will occupy the unit as their principal residence as well as a purchaser who occupies or intends to occupy the unit as a secondary residence, as defined in § 203.18(f)(2), within a range between 25 and 75 percent of the total number of units in the project (which may be changed following the procedures in paragraph (d)(6) of this section), with a specific minimum percentage to be established by HUD through notice.

(x) Phasing, provided that only legal phasing is permitted and individual phases must contain sufficient numbers of units to be separately sustainable as required by HUD, so that the insurance fund is not put at undue risk. In determining whether to accept legal phasing, HUD will assess the potential risk to the insurance fund and other factors that HUD may publish in notices. Phases must meet HUD's requirements for approval in paragraph (d) of this section and must at a minimum be:

(A) In a vertical building, contiguous, with all units built out and having a certificate of occupancy; or

(B) In a detached or semi-detached development, consisting of groups of adjoining or contiguous homes (which may include, at HUD's discretion, easements for utilities and roads serving the homes), where all homes in a phase are built out and have a certificate of occupancy;

(xi) Reserve requirements, provided the reserve account is funded with at least 10 percent of the monthly unit assessments, unless a lower amount is deemed acceptable by HUD based on a reserve study completed not more than 24 months before a request for a lower amount is received.

(xii) Such other matters that may affect the viability or marketability of the project or its units.

(e) The Secretary will publish any generally applicable change in the upper and lower limits of the ranges of percentages in paragraphs (d)(6)(vii) through (ix) of this section in a notice published for 30 days of public comment. After considering the comments, the Department will publish a final notice announcing the new overall upper and lower limits of the range of percentages being implemented, and the date on which the new standard becomes effective.

(f) The Secretary may grant an exception to any specifically prescribed requirements within paragraph (d)(6) of this section on a case-by-case basis in HUD's discretion, provided that:

(1) In the case of an exception to the approval requirements for the commercial/nonresidential space percentage that HUD establishes under paragraph (d)(6)(vii) of this section, any request for such an exception and the determination of the disposition of such request may be made, at the option of the requester, under the direct endorsement lender review and approval process or under the HUD review and approval process through the applicable field office of the Department; and

(2) In determining whether to allow such an exception, factors relating to the economy for the locality in which the project is located or specific to the project, including the total number of family units in the project, shall be considered. A DELRAP lender, in determining whether to grant a requested exception, shall follow any procedures that HUD may establish.

(g) *Application for Condominium Project approval and Renewal of Approval.* (1) In order to become approved, an application for Condominium Project approval, in accordance with the requirements of the Commissioner, must be submitted to either HUD or a DELRAP mortgagee, if consistent with the mortgagee's DELRAP approval.

(2) The application will be reviewed and if all eligibility criteria have been met, the Condominium Project will be approved and placed on the list of HUD-approved Condominium Projects.

(3) Unless otherwise specified in writing by HUD, Condominium Projects are approved for a period of three (3) years from the date of placement on the list of approved condominiums. HUD may rescind a Condominium Project's approval at any time if the project fails to comply with any requirement for approval.

(4) Eligible parties may request renewal of the approval of an approved Condominium Project by submitting a request for recertification no earlier than 6 months prior to expiration of the approval or no later than 6 months after expiration of the approval. HUD shall specify the format for the recertification request, which shall allow the request to be supported by updating previously submitted information, rather than resubmission of all information. However, if the request for recertification is not submitted within 6 months after the expiration of the Condominium Project's approval, a complete, new approval application is required.

(h) *Single-Unit Approval.* (1) *Limit on Single-Unit Approvals.* HUD will not insure mortgages in an unapproved project if the percentage of such mortgages exceeds an amount determined by the Commissioner to be necessary for the protection of the insurance fund, which percentage will be specified by the Commissioner by notice.

(2) *Single-Unit Approvals.* Mortgagees must ensure that the Condominium Unit is located in a Condominium Project that either meets the eligibility requirements for approval as set forth in paragraph (d) of this section as modified by this paragraph, except that HUD may provide that Single-Unit Approvals may be approved by meeting a subset of these standards, or less stringent standards, as stated by notice. In addition, a unit may be eligible for Single-Unit Approval if it:

(i) Is not in a Condominium Project that is on the list of FHA-approved Condominium Projects, or in a project that has been subject to adverse determination for significant issues that affect the viability of the project;

(ii) Is in a project that is complete under paragraph (d)(4) of this section;

(iii) Is not a manufactured housing condominium project or 2–4 unit project;

(iv) Is not a manufactured home and is in a project that has at least 5 dwelling units; and

(v) Is in a project in which the amount of Single-Unit Approvals is limited to a percentage of the total number of units in the project that is within a range of 0 to 20 percent, with the exact percentage within that range to be determined by HUD through notice.

(3) HUD will publish any generally applicable change in the overall upper and lower limits of the range stated in paragraph (h)(2)(v) of this section by notice published for 30 days of public comment. After considering the comments, HUD will publish a final notice announcing the new upper and lower limit of the range of percentages being implemented, and the date on which the new standard becomes effective.

(i) *Site Condominium.* Site condominiums are as defined in § 203.43b. Site Condominiums must meet all of the requirements of paragraph (d)(1) of this section for approval, except that:

(1) Insurance and maintenance costs must be the sole responsibility of the unit owner; and

(2) Any common assessments collected must be restricted to use solely for amenities outside of the footprint of the individual site.

■ 5. Amend § 203.50 to revise paragraphs (a)(1) and (f) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(a) * * *

(1) The term *rehabilitation loan* means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing:

(i) The rehabilitation of an existing one-to-four unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located;

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; or

(iv) The rehabilitation of the interior space or the installation of firewalls in the attic of a condominium unit, as defined in § 203.43b, excluding any exteriors or areas that are the responsibility of the Association; and

* * * * *

(f) The loan may not exceed an amount which, when added to any outstanding indebtedness of the borrower that is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1)(i) The limits prescribed in § 203.18(a)(1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1));

(ii) The limits prescribed in § 203.18(a)(1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2));

(iii) Eighty-five (85) percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in § 203.18(a)(1) and (3), as the Secretary may prescribe (in the case of an eligible non-occupant mortgagor as defined in § 203.18(f)(3));

(iv) The limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation;

(2) The limits prescribed in the authorities listed in this paragraph (f), based upon 110 percent of the Commissioner's estimate of the value of the property after rehabilitation; or

(3) For any Condominium Unit that is not a detached dwelling, attached townhouse dwelling, manufactured home (as defined in 24 CFR 3280.2), or site condominium (as defined in § 203.43b), 100 percent of the after-improvement value of the Condominium Unit.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

■ 6. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements—Individually Owned Units

■ 7. Add § 234.2 to read as follows:

§ 234.2 Savings clause.

Effective [date that is 30 days after the date of publication of the final rule], HUD's regulations at § 203.43b of this chapter govern approval of real estate consisting of a one-family unit in a multifamily project, and an undivided interest in the common areas and facilities which serve the project, except where the project has a blanket mortgage insured under section 234(d) of the National Housing Act, 12 U.S.C.

1715y(d) (section 234(d)). Where the project has a blanket mortgage insured by HUD under section 234(d), this 24 CFR part 234 applies to the approval of a one-family unit in such project.

Dated: September 21, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–23258 Filed 9–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123600–16]

RIN 1545–BN55

Guidance under Section 851 Relating to Investments in Stock and Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides guidance relating to the income test and the asset diversification requirements that are used to determine whether a corporation may qualify as a regulated investment company (RIC) for federal income tax purposes. These proposed regulations provide guidance to corporations that intend to qualify as RICs.

DATES: Written or electronic comments and requests for a public hearing must be received by December 27, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123600–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–123600–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–123600–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Matthew Howard of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 317–7053; concerning submissions of comments and requests for a public hearing, Regina Johnson (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to RICs. Section 851 of the Internal Revenue Code (Code) sets forth requirements for qualifying as a RIC.

Section 851(a) provides that a RIC is any domestic corporation that (1) at all times during the taxable year is registered under the Investment Company Act of 1940, Public Law 76–768, 54 Stat. 789 (codified as amended at 15 U.S.C. 80a–1—80a–64 (2016)) (the 1940 Act), as a management company or unit investment trust or has in effect an election under the 1940 Act to be treated as a business development company; or (2) is a common trust fund or other similar fund excluded by section 3(c)(3) of the 1940 Act from the definition of "investment company" and is not included in the definition of "common trust fund" by section 584(a).

To be treated as a RIC for a taxable year, a corporation must satisfy the income test set forth in section 851(b). The income test under section 851(b)(2) requires that at least 90 percent of the corporation's gross income for the taxable year be derived from:

> (A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the [1940 Act]) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and (B) net income derived from an interest in a qualified publicly traded partnership (as defined in [section 851(h)]).

Section 851(b)(3) provides that to be treated as a RIC a corporation also must satisfy the following asset diversification requirements at the close of each quarter of the corporation's taxable year:

> (A) at least 50 percent of the value of its total assets is represented by—
>
> (i) cash and cash items (including receivables), Government securities and securities of other [RICs], and
>
> (ii) other securities for purposes of this calculation limited, except and to the extent provided in [section 851(e)], in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and
>
> (B) not more than 25 percent of the value of its total assets is invested in—
>
> (i) the securities (other than Government securities or the securities of other [RICs]) of any one issuer,
>
> (ii) the securities (other than the securities of other [RICs]) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or
>
> (iii) the securities of one or more qualified publicly traded partnerships (as defined in [section 851(h)]).

These proposed regulations relate to the RIC income test and asset diversification requirements. Section A. of this preamble concerns the meaning of security. Section B. of this preamble addresses inclusions under sections 951(a)(1)(A)(i) and 1293(a). These proposed regulations also revise § 1.851–2(b)(1) of the existing final regulations to merely incorporate changes to section 851(b)(2) since the existing final regulations were published in the **Federal Register** on November 26, 1960, in TD 6500 (25 FR 11910).

A. Defining Securities

The income test and asset diversification requirements both use the term "securities." For purposes of the income test, a security is defined by reference to section 2(a)(36) of the 1940 Act, while section 851(c) provides rules and definitions that apply for purposes of the asset diversification requirements of section 851(b)(3) but does not specifically define "security." Section 851(c)(6), however, provides that the terms used in section 851(b)(3) and (c) have the same meaning as when used in the 1940 Act. An asset is therefore a security for purposes of the income test and the asset diversification requirements if it is a security under the 1940 Act.

The Treasury Department and the IRS have in the past addressed whether certain instruments or positions are securities for purposes of section 851. In particular, Rev. Rul. 2006–1 (2006–1 CB 261) concludes that a derivative contract with respect to a commodity index is not a security for purposes of section 851(b)(2). The ruling also holds that income from such a contract is not qualifying other income for purposes of section 851(b)(2) because that income is not derived with respect to the RIC's business of investing in stocks, securities, or currencies. Rev. Rul. 2006–1 was modified and clarified by Rev. Rul. 2006–31 (2006–1 CB 1133), which states that Rev. Rul. 2006–1 was not intended to preclude a conclusion that income from certain instruments (such as certain structured notes) that create commodity exposure for the holder is qualifying income under section 851(b)(2).

After the issuance of Rev. Rul. 2006–31, the IRS received a number of private letter ruling requests concerning whether certain instruments that provide RICs with commodity exposure were securities for purposes of the income test and the asset diversification requirements. By 2010, the IRS was devoting substantial resources to these private letter ruling requests. Moreover, it is not clear whether Congress intended to allow RICs to invest in securities that provided commodity exposure. Consequently, in July 2011, the IRS notified taxpayers that the IRS would not issue further private letter rulings addressing specific proposed RIC commodity-related investments while the IRS reviewed the issues and considered guidance of broader applicability.

Finally, determining whether certain investments that provide RICs with commodity exposure are securities for purposes of the income test and the asset diversification requirements requires the IRS implicitly to determine what is a security within the meaning of section 2(a)(36) of the 1940 Act. Section 38 of the 1940 Act, however, grants exclusive rulemaking authority under the 1940 Act to the Securities and Exchange Commission (SEC), including "defining accounting, technical, and trade terms" used in the 1940 Act. Any future guidance regarding whether particular financial instruments, including investments that provide RICs with commodity exposure, are securities for purposes of the 1940 Act is therefore within the jurisdiction of the SEC.

Section 2.01 of Rev. Proc. 2016–3 (2016–1 IRB 126) provides that the IRS may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration (including due to resource constraints) or on other grounds whenever warranted by the facts or circumstances of a particular case. If the IRS determines that it is not in the interest of sound tax administration to issue a letter ruling or determination letter due to resource constraints, the IRS will adopt a consistent approach with respect to taxpayers that request a ruling on the same issue. The IRS will also consider adding the issue to the no rule list at the first opportunity.

The Treasury Department and the IRS have reviewed the issues, considered the concerns expressed, considered resource constraints, and determined that the IRS should no longer issue letter rulings on questions relating to the treatment of a corporation as a RIC that require a determination of whether a financial instrument or position is a security under the 1940 Act. Contemporaneously with the publication of these proposed regulations, the Treasury Department and the IRS are issuing Rev. Proc. 2016–50 (2016–43 IRB ____), which provides that the IRS ordinarily will not issue rulings or determination letters on any issue relating to the treatment of a corporation as a RIC that requires a determination of whether a financial instrument or position is a security under the 1940 Act. Thus, for example, the IRS ordinarily will not issue a ruling on whether income is of a type described in the income test of section 851(b)(2) if that ruling depends on whether an instrument is a security under the 1940 Act.

The Treasury Department and the IRS request comments as to whether Rev. Rul. 2006–1, Rev. Rul. 2006–31, and other previously issued guidance that involves determinations of whether a financial instrument or position held by a RIC is a security under the 1940 Act should be withdrawn effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

B. Inclusions Under Section 951(a)(1)(A)(i) or 1293(a)

In certain circumstances, a U.S. person may be required under section 951(a)(1)(A)(i) or 1293(a) to include in taxable income certain earnings of a foreign corporation in which the U.S. person holds an interest, without regard to whether the foreign corporation makes a corresponding distribution of cash or property to the U.S. person. Section 851(b) was amended by the Tax Reduction Act of 1975, Public Law 94–12, section 602, 89 Stat. 26, 58 (the "1975 Act") (for inclusions under section 951(a)(1)(A)(i)), and by the Tax Reform Act of 1986, Public Law 99–514, section 1235, 100 Stat. 2085, 2575 (the "1986 Act") (for inclusions under section 1293(a)), to specify how a RIC treats amounts included in income under section 951(a)(1)(A)(i) or 1293(a) for purposes of the income test of section 851(b)(2). The language added in those amendments provides:

> For purposes of [section 851(b)(2)], there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

The significance of treating an inclusion as a dividend under section 851 is that a dividend is qualifying income under section 851(b)(2). The amendments to section 851(b) made by the 1975 Act and the 1986 Act unambiguously condition dividend treatment of an inclusion under section 951(a)(1)(A)(i) or 1293(a) on a distribution from the foreign corporation's earnings and profits attributable to the amount included. Absent a distribution, there is no support in the Code for treating an inclusion under section 951(a)(1)(A)(i) or 1293(a) as a dividend under section 851.

Notwithstanding the distribution required by section 851(b), in certain circumstances the IRS has previously issued letter rulings under section 851(b)(2) that permit an inclusion under section 951(a)(1)(A)(i) or 1293(a) to qualify as "other income" derived with respect to a RIC's business of investing in currencies or 1940 Act stock or securities even in the absence of a distribution. Reading section 851(b)(2) in this manner ignores the requirement in section 851(b) that amounts be distributed in order to treat these inclusions as dividends. This distribution requirement is a more specific provision than the other income clause. In addition, it cannot be suggested that the distribution requirement was superseded by the other income clause because the other income clause and the distribution requirement for inclusions under section 1293(a) were both added by the 1986 Act. Therefore, these proposed regulations specify that an inclusion under section 951(a)(1)(A)(i) or 1293(a) is treated as a dividend for purposes of section 851(b)(2) only to the extent that the distribution requirement in section 851(b) is met. These proposed regulations further provide that, for purposes of section 851(b)(2), an inclusion under section 951(a)(1) or 1293(a) does not qualify as other income derived with respect to a RIC's business of investing in stock, securities, or currencies.

Proposed Effective/Applicability Date

The rule in § 1.851–2(b)(2)(iii) of the proposed regulations applies to taxable years that begin on or after the date that is 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be made available for public inspection at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Matthew Howard, Office of Associate Chief Council (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

The IRS revenue rulings and revenue procedure cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS Web site at *www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ Par. 2. Section 1.851–2 is amended by:

■ 1. Revising paragraphs (b)(1) and (b)(2)(i).

■ 2. Adding paragraph (b)(2)(iii).

The addition and revisions read as follows:

§ 1.851–2 Limitations.

* * * * *

(b) *Gross income requirement*—(1) *General rule.* A corporation will not be a regulated investment company for a taxable year unless 90 percent of its gross income for that year is income described in paragraph (b)(1)(i) of this section or in paragraph (b)(1)(ii) of this section. Any loss from the sale or other disposition of stock or securities is not taken into account in the gross income computation.

(i) *Gross income amounts.* Income is described in this paragraph (b)(1)(i) if it is gross income derived from:

(A) Dividends;

(B) Interest;

(C) Payments with respect to securities loans (as defined in section 512(a)(5));

(D) Gains from the sale or other disposition of stocks or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended);

(E) Gains from the sale or other disposition of foreign currencies; or

(F) Other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to a regulated investment company's business of investing in such stock, securities, or currencies.

(ii) *Income from a publicly traded partnership.* Income is described in this paragraph (b)(1)(ii) if it is net income derived from an interest in a qualified publicly traded partnership (as defined in section 851(h)).

(2) *Special rules*—(i) For purposes of section 851(b)(2)(A) and paragraph (b)(1)(i)(A) of this section, amounts included in gross income for the taxable year under section 951(a)(1)(A)(i) or 1293(a) are treated as dividends only to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year that are attributable to the amounts included in gross income for the taxable year under section 951(a)(1)(A)(i) or 1293(a). For allocation of distributions to earnings and profits of foreign corporations, see § 1.959–3.

* * * * *

(iii) For purposes of section 851(b)(2)(A) and paragraph (b)(1)(i)(F) of this section, amounts included in gross income under section 951(a)(1) or 1293(a) are not treated as other income derived with respect to a corporation's business of investing in stock, securities, or currencies. The rule in this paragraph (b)(2)(iii) applies to taxable years that begin on or after the date that is 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–23408 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0372; FRL–9953–15–Region 5]

Air Plan Approval; Ohio; Redesignation of the Columbus, Ohio Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Columbus, Ohio area is attaining the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and to approve a request from the Ohio Environmental Protection Agency (Ohio EPA) to redesignate the area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Columbus area includes Delaware, Fairfield, Knox, Licking, and Mason Counties. Ohio EPA submitted this request on June 16, 2016. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2008 8-hour ozone standard through 2030 in the Columbus area. Finally, EPA finds adequate and is proposing to approve the state's 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Columbus area.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0372 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What are the actions EPA is proposing?
II. What is the background for these actions?
III. What are the criteria for redesignation?
IV. What is EPA's analysis of Ohio's redesignation request?
  A. Has the Columbus area attained the 2008 8-hour ozone NAAQS?
  B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the Columbus area, and does Ohio have a fully approved SIP for the area under section 110(k) of the CAA?
    1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Columbus Area for Purposes of Redesignation
    2. The Columbus Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA
  C. Are the air quality improvements in the Columbus area due to permanent and enforceable emission reductions?
    1. Permanent and Enforceable Emission Controls Implemented
    2. Emission Reductions
    3. Meteorology
  D. Does Ohio have a fully approvable ozone maintenance plan for the Columbus area?
    1. Attainment Inventory
    2. Has the state documented maintenance of the ozone standard in the Columbus area?
    3. Continued Air Quality Monitoring
    4. Verification of Continued Attainment
    5. What is the contingency plan for the Columbus area?
V. Has the state adopted approvable motor vehicle emission budgets?
  A. Motor Vehicle Emission Budgets
  B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Columbus area?
  C. What is a safety margin?
VI. Proposed Actions
VII. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Columbus nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio EPA's request to change the legal designation of the Columbus area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Columbus area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Columbus area. The adequacy comment period for the MVEBs began on July 22, 2016, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on August 22, 2016. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated August 23, 2016, EPA informed Ohio EPA that we found the 2020 and 2030 MVEBs to be adequate for use in transportation conformity analyses. Please see section V.B. of this rulemaking, "What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Columbus area," for further explanation of this process. Therefore, we find adequate, and are proposing to approve, the State's 2020 and 2030 MVEBs for transportation conformity purposes.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Columbus area was designated as a marginal nonattainment area for the 2008 ozone NAAQS on May 21, 2012 (77 FR 30088) (effective July 20, 2012).

In a final implementation rule for the 2008 ozone NAAQS (SIP Requirements Rule),[1] EPA established ozone standard attainment dates based on table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective designation date for areas classified as marginal nonattainment for the 2008 ozone NAAQS. Therefore, the attainment date for the Columbus area was July 20, 2015. On May 4, 2016 (81 FR 26697), in accordance with section

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[1] This rule, titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" and published at 80 FR 12264 (March 6, 2015), addresses nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR), emission inventories, and the timing requirements for SIP submissions and compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS is revoked.

181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Columbus area attained the standard by its July 20, 2015, attainment date for the 2008 ozone NAAQS. EPA's determination was based upon 3 years of complete, quality-assured and certified data for the 2012–2014 time period.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton. Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Ohio's redesignation request?

A. Has the Columbus area attained the 2008 8-hour ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,[2] on average, for the three-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the three-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

On May 4, 2016, in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Columbus area attained the standard by its July 20, 2015 attainment date for the 2008 ozone NAAQS. This determination was based upon 3 years of complete, quality-assured and certified data for the 2012–2014 time period. In addition, EPA has reviewed the available ozone monitoring data from monitoring sites in the Columbus area for the 2013–2015 time period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Columbus area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

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[2] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2012–2014 and 2013–2015 time periods, the ozone season for Ohio was April-October. Beginning in 2016, the ozone season for Ohio is March-October. See, 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE COLUMBUS AREA

County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 Average (ppm)
Delaware	39–041–0002	0.070	0.066	0.068	0.068
Franklin	39–049–0029	0.073	0.070	0.071	0.071
	39–049–0037	0.070	0.069	0.064	0.067
	39–049–0081	0.070	0.069	0.063	0.065
Knox	39–083–0002	0.067	0.066	0.071	0.068
Licking	39–089–0005	0.065	0.066	0.068	0.066
Madison	39–097–0007	0.066	0.069	0.069	0.068

The 3-year ozone design value for 2013–2015 is 0.071 ppm,[3] which meets the 2008 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Columbus area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Columbus area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area exceeds the NAAQS after proposal but prior to final approval of the redesignation. Preliminary 2016 data indicate that this area continues to attain the 2008 ozone NAAQS. As discussed in section IV.D.3. below, Ohio EPA has committed to continue monitoring ozone in this area to verify maintenance of the ozone standard.

B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the Columbus area, and does Ohio have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA proposes to find that Ohio has a fully approved SIP under section 110(k) of the CAA. Additionally, EPA proposes to find that the Ohio SIP satisfies the criterion that it meet applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). In making these proposed determinations, EPA ascertained which CAA requirements are applicable to the Columbus area and the Ohio SIP and, if applicable, whether the required Ohio SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Columbus Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.*, NO_X SIP call.[4] However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

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[3] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

[4] On October 27, 1992 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO_X SIP Call on February 4, 2008 (73 FR 6427).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On October 16, 2014 (79 FR 62019), EPA approved elements of the SIP submitted by Ohio to meet the requirements of section 110 for the 2008 ozone standard. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Columbus area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's 8-hour ozone redesignation request.

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Columbus area was classified as marginal under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for marginal ozone nonattainment areas such as the Columbus area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's NSR program on January 10, 2003 (68 FR 1366) and February 25, 2010 (75 FR 8496). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio has demonstrated that the Columbus area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Ohio's PSD program will become effective in the Columbus area upon redesignation to attainment. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[5] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Ohio has an approved conformity SIP for the Columbus area. *See* 80 FR 11133 (March 2, 2015).

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[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. Ohio EPA submitted a 2008 base year emissions inventory for the Columbus area on July 18, 2014. EPA approved this emissions inventory as a revision to the Ohio SIP on March 10, 2016 (81 FR 12591).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Columbus area is not subject to the section 182(a)(2) RACT "fix up" requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Ohio complied with this requirement for the Columbus area under the prior 1-hour ozone NAAQS. *See* 59 FR 23796 (May 9, 1994) and 60 FR 15235 (March 23, 1995).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Ohio's redesignation request for this standard, the Columbus area is not subject to the section 182(a)(2)(B) requirement because the Columbus area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA amendments.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Ohio currently has a fully-approved part D NSR program in place. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496). As discussed above, Ohio has demonstrated that the Columbus area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Columbus area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule, Ohio will continue to update its emissions inventory at least once every three years. With regard to stationary source emission statements, EPA approved Ohio's emission statement rule on September 27, 2007 (72 FR 54844). On July 18, 2014, Ohio certified that this approved SIP regulation remains in place and remains enforceable for the 2008 ozone standard. EPA approved Ohio's certification on March 10, 2016 (81 FR 12591).

The Columbus area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Columbus Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

Ohio has adopted and submitted and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Ohio SIP for the Columbus area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Columbus area due to permanent and enforceable emission reductions?

To support the redesignation of an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and other permanent and enforceable emission reductions. EPA has determined that Ohio has demonstrated that that the observed ozone air quality improvement in the Columbus area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2011 and 2014. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Columbus area and upwind areas have implemented in recent years. In addition, Ohio EPA provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 27 eastern states, including Ohio, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved Ohio's CAIR regulations into the Ohio SIP on February 1, 2008 (73 FR 6034), and September 25, 2009 (74 FR 48857). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d

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conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR[6] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_X ozone season emissions budgets for Ohio. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets were originally promulgated to begin on January 1, 2014, and are now scheduled to begin on January 1, 2017. CSAPR will continue to operate under the existing emissions budgets until EPA addresses the D.C. Circuit's remand.

While the reduction in NO_X emissions from the implementation of CSAPR will result in lower concentrations of transported ozone entering the Columbus area throughout the maintenance period, EPA is proposing to approve the redesignation of the Columbus area without relying on those measures within Ohio as having led to attainment of the 2008 ozone NAAQS or contributing to maintenance of that standard. In so doing, we are proposing to determine that the D.C. Circuit's invalidation of the Ohio CSAPR Phase 2 ozone season NO_X emissions budget does not bar today's proposed redesignation.

The improvement in ozone air quality in the Columbus area from 2011 (a year when the design value for the area was above the NAAQS) to 2014 (a year when the design value was below the NAAQS) is not due to CSAPR emissions reductions because, as noted above, CSAPR did not go into effect until January 1, 2015, after the area was already attaining the standard. As a general matter, because CSAPR is CAIR's replacement, emissions reductions associated with CAIR will for most areas be made permanent and enforceable through implementation of CSAPR. In addition, there are no EGU sources in the Columbus area. Furthermore, as laid out in the State's maintenance demonstration, no EGUs are expected to locate in the area throughout the maintenance period.

Given the particular facts and circumstances associated with the Columbus area, EPA does not believe that the D.C. Circuit's invalidation of Ohio's CSAPR Phase 2 NO_X ozone season budget, which replaced CAIR's NO_X ozone season budget, is a bar to EPA's redesignation of the Columbus area for the 2008 ozone NAAQS.

b. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76 and 28 percent, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. In addition, EPA estimates that beginning in 2007, a reduction of 30,000 tons per year of NO_X will result from the benefits of sulfur control on heavy-duty gasoline vehicles. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduces both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. While these reductions did not aid the area in attaining the standard, emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-highway heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Columbus area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

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[6] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO_2 limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these nonroad diesel engines by approximately 90 percent. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_X emissions. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines. On March 3, 2010 (75 FR 9648), EPA issued a rule to reduce hazardous air pollutants from existing diesel powered stationary reciprocating internal combustion engines, also known as compression ignition engines. Amendments to this rule were finalized on January 14, 2013 (78 FR 6674). EPA estimated that when this rule is fully implemented in 2013, NO_X and VOC emissions from these engines will be reduced by approximately 9,600 and 36,000 tons per year, respectively.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, and are expected to result in a 15 to 25 percent reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_X from these engines. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Oil and Natural Gas Industry Standards. On August 16, 2012 (77 FR 49490) EPA finalized several rules that apply to the oil and natural gas sector. These rule set standards for natural gas wells that are hydraulically fractured along with several other sources in the oil and natural gas sector. When these rules are fully implemented in 2015, EPA estimates nationally that VOC emissions will be reduced by 190,000 to 290,000 tons annually.

c. Control Measures Specific to the Columbus Area

While there are no EGUs in the Columbus area, the Picway Power Plant is located in Pickaway County, approximately 1.25 kilometers from the southern border of Franklin County. This plant permanently shut down in May of 2015. The coal-fired boiler did not operate in 2014 and between 2011 and 2013 NO_X emissions dropped from 0.57 tons per summer day (TPSD) in 2011 to 0.45 TPSD in 2013.

2. Emission Reductions

Ohio is using a 2011 inventory as the nonattainment base year. Area, nonroad mobile, airport related emissions (AIR), and point source emissions (EGUs and non-EGUs) were collected from the Ozone NAAQS Implementation Modeling platform (2011v6.1). For 2011, this represents actual data Ohio reported to EPA for the 2011 National Emissions inventory (NEI). Because emissions from state inventory databases, the NEI, and the Ozone NAAQS Emissions Modeling platform are annual totals, tons per summer day were derived according to EPA's guidance document "Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles" dated April 29 2002, using the temporal allocation references accompanying the 2011v6.1 modeling inventory files. Onroad mobile source emissions were developed in conjunction with the Ohio EPA, the Ohio Department of Transportation, the Mid-Ohio Regional Planning Commission (MORPC), and the Licking County Area Transportation (LCAT) and were calculated from emission factors produced by EPA's Motor Vehicle Emission Simulator (MOVES) model and data extracted from the region's travel-demand model.

For the attainment inventory, Ohio is using 2014, one of the years the Columbus area monitored attainment of the 2008 ozone standard. Because the 2014 NEI inventory was not available at the time Ohio EPA was compiling the redesignation request, the state was unable to use the 2014 NEI inventory directly. For area, nonroad mobile, and AIR, 2014 emissions were derived by interpolating between 2011 and 2018 Ozone NAAQS Emissions Modeling platform inventories. The point source sector for the 2014 inventory was developed using actual 2014 point source emissions reported to the state database, which serve as the basis for the point source emissions reported to EPA for the NEI. Summer day inventories were derived for these sectors using the methodology described above. Finally, onroad mobile source emissions were developed using the same methodology described above for the 2011 inventory.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2011 to 2014 for the Columbus area. Emissions data are shown in Tables 2 through 6.

TABLE 2—COLUMBUS AREA NO_X EMISSIONS FOR NONATTAINMENT YEAR 2011 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.08	0.01	4.39	2.82	16.26	23.56
Fairfield	4.52	0.00	2.79	0.75	9.54	17.60
Franklin	2.65	1.48	16.12	8.76	134.04	163.05
Knox	0.08	0.00	1.36	0.50	2.90	4.84
Licking	1.30	0.00	2.57	0.98	17.45	22.30
Madison	0.01	0.00	1.66	0.62	7.09	9.38

Table 2—Columbus Area NO_X Emissions for Nonattainment Year 2011 (TPSD)—Continued

County	Point	AIR	Nonroad	Area	Onroad	Total
Area Totals	8.64	1.49	28.89	14.43	187.28	240.73

Table 3—Columbus Area VOC Emissions for Nonattainment Year 2011 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.34	0.01	3.31	4.37	7.14	15.17
Fairfield	0.49	0.01	1.25	4.71	4.82	11.28
Franklin	3.06	0.35	11.76	28.36	70.65	114.18
Knox	0.20	0.01	0.97	3.42	1.36	5.96
Licking	0.45	0.01	2.17	6.65	8.03	17.31
Madison	0.06	0.01	0.82	2.50	2.83	6.22
Area Totals	4.60	0.40	20.28	50.01	94.83	170.12

Table 4—Columbus Area NO_X Emissions for Attainment Year 2014 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.07	0.01	3.45	2.67	11.76	17.96
Fairfield	3.99	0.00	2.20	0.76	7.19	14.14
Franklin	1.36	1.59	12.49	8.58	98.88	122.90
Knox	0.12	0.00	1.11	0.51	2.18	3.92
Licking	0.93	0.00	2.05	1.00	13.33	17.31
Madison	0.01	0.00	1.38	0.60	5.31	7.30
Area Totals	6.48	1.60	22.68	14.12	138.65	183.53

Table 5—Columbus Area VOC Emissions for Attainment Year 2014 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.36	0.01	2.86	4.27	5.00	12.50
Fairfield	0.42	0.01	1.08	4.65	3.12	9.28
Franklin	2.22	0.37	10.28	27.81	50.81	91.49
Knox	0.19	0.01	0.82	3.39	1.02	5.43
Licking	0.69	0.01	1.85	6.57	6.00	15.12
Madison	0.14	0.01	0.71	2.46	2.11	5.43
Area Totals	4.02	0.42	17.60	49.15	68.06	139.25

Table 6—Change in NO_X and VOC Emissions in the Columbus Area Between 2011 and 2014 (TPSD)

	NO_X			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	8.64	6.48	−2.16	4.60	4.02	−0.58
AIR	1.49	1.60	0.11	0.40	0.42	0.02
Nonroad	28.89	22.68	−6.21	20.28	17.60	−2.68
Area	14.43	14.12	−0.31	50.01	49.15	−0.86
Onroad	187.28	138.65	−48.63	94.83	68.06	−26.77
Total	240.73	183.53	−57.20	170.12	139.25	−30.87

As shown in Table 6, NO_X and VOC emissions in the Columbus area declined by 57.20 TPSD and 30.87 TPSD, respectively, between 2011 and 2014.

3. Meteorology

To further support Ohio's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not unusually favorable meteorology, an analysis was performed by Ohio EPA. Ohio analyzed the maximum fourth-high 8-hour ozone value for May, June, July, August, and September, for years 2000 to 2015.

First, the maximum 8-hour ozone concentration at each monitor in the Columbus area was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. While there is a clear trend in decreasing ozone concentrations at all monitors, there is no such trend in the temperature data.

Ohio EPA also examined the relationship between the average summer temperature for each year of the 2000–2015 period and the 4th maximum 8-hour ozone concentration. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regression lines for each data set demonstrate that the average summer temperatures have increased, while ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Columbus area, and not unusually favorable summer temperatures.

Finally, Ohio EPA analyzed the relationship between average summertime relative humidity and average 4th maximum 8-hour ozone concentrations. The data did not show a correlation between relative humidity and ozone concentrations.

Ohio EPA's analyses of meteorological variables associated with ozone formation further support Ohio's demonstration that the improvement in air quality in the Columbus area between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not on unusually favorable meteorology.

D. Does Ohio have a fully approvable ozone maintenance plan for the Columbus area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redsignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Columbus area to attainment for the 2008 ozone standard, Ohio EPA submitted a SIP revision to provide for maintenance of the 2008 ozone standard through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As is discussed more fully below, EPA proposes to find that Ohio's ozone maintenance plan includes the necessary components and is proposing to approve the maintenance plan as a revision of the Ohio SIP.

1. Attainment Inventory

EPA is proposing to determine that the Columbus area has attained the 2008 8-hour ozone NAAQS based on monitoring data for the period of 2013–2015. Ohio EPA selected 2014 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Columbus area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Columbus area?

Ohio has demonstrated maintenance of the 2008 ozone standard through 2030 by assuring that current and future emissions of VOC and NO_X for the Columbus area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2020 and 2030 to demonstrate maintenance. 2030 is more than 10 years after the expected effective date of the redesignation to attainment and 2020 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

To develop the 2020 and 2030 inventories, the state collected data from the Ozone NAAQS Emissions Modeling platform (2011v6.1) inventories for years 2011, 2018 and 2025. 2020 emissions for area, nonroad mobile, AIR, and point source sectors were derived by interpolating between 2018 and 2025. 2030 emissions for area, nonroad mobile, AIR, and point source sectors were derived using the TREND function in Excel. If the trend function resulted in a negative value the emissions were assumed not to change. Summer day inventories were derived for these sectors using the methodology described in section IV.C.2. above. Finally, onroad mobile source emissions were developed in using the same methodology described in section IV.C.2. above for the 2011 inventory. Emissions data are shown in Tables 7 through 11 below.

TABLE 7—COLUMBUS AREA NO_X EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.08	0.01	2.16	2.35	7.79	12.39
Fairfield	4.39	0.00	1.38	0.76	4.73	11.26
Franklin	2.44	1.85	7.73	8.20	60.59	80.81
Knox	0.08	0.00	0.73	0.52	1.46	2.79
Licking	1.31	0.00	1.31	1.02	8.57	12.21
Madison	0.01	0.00	0.94	0.56	3.42	4.93
Area Totals	8.31	1.86	14.25	13.41	86.56	124.39

TABLE 8—COLUMBUS AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.32	0.01	2.33	4.14	3.44	10.24
Fairfield	0.48	0.01	0.93	4.52	2.13	8.07
Franklin	1.97	0.41	8.97	27.07	32.30	70.72
Knox	0.20	0.01	0.63	3.34	0.71	4.89
Licking	0.40	0.01	1.47	6.39	4.02	12.29
Madison	0.06	0.01	0.59	2.38	1.45	4.49
Area Totals	3.43	0.46	14.92	47.84	44.05	110.70

TABLE 9—COLUMBUS AREA NO_X EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.07	0.01	0.97	1.79	7.15	9.99
Fairfield	5.64	0.00	0.60	0.76	4.08	11.08
Franklin	2.27	2.36	3.96	7.50	50.99	67.08
Knox	0.09	0.00	0.33	0.53	1.33	2.28
Licking	1.33	0.00	0.62	1.04	7.41	10.40
Madison	0.01	0.00	0.41	0.47	3.07	3.96
Area Totals	9.41	2.37	6.89	12.09	74.03	104.79

TABLE 10—COLUMBUS AREA VOC EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Delaware	0.32	0.01	2.09	4.07	3.26	9.75
Fairfield	0.55	0.01	0.94	4.29	1.84	7.63
Franklin	1.94	0.51	9.53	26.39	27.90	66.27
Knox	0.20	0.01	0.50	3.23	0.64	4.58
Licking	0.39	0.01	1.29	6.05	3.56	11.30
Madison	0.06	0.01	0.54	2.24	1.33	4.18
Area Totals	3.46	0.56	14.89	46.27	38.53	103.71

TABLE 11—CHANGE IN NO_X AND VOC EMISSIONS IN THE COLUMBUS AREA BETWEEN 2014 AND 2030 (TPSD)

	NO_X				VOC			
	2014	2020	2030	Net change (2014–2030)	2014	2020	2030	Net change (2014–2030)
Point	6.48	8.31	9.41	2.93	4.02	3.43	3.46	−0.56
AIR	1.60	1.86	2.37	0.77	0.42	0.46	0.56	0.14
Nonroad	22.68	14.25	6.89	−15.79	17.60	14.92	14.89	−2.71
Area	14.12	13.41	12.09	−2.03	49.15	47.84	46.27	−2.88
Onroad	138.65	86.56	74.03	−64.62	68.06	44.05	38.53	−29.53
Total	183.53	124.39	104.79	−78.74	139.25	110.70	103.71	−35.54

In summary, the maintenance demonstration for the Columbus area shows maintenance of the 2008 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2014 emission levels when taking into account both future source growth and implementation of future controls. Table 11 shows NO_X and VOC emissions in the Columbus area are projected to decrease by 78.74 TPSD and 35.54 TPSD, respectively, between 2014 and 2030.

3. Continued Air Quality Monitoring

Ohio EPA has committed to continue to operate the ozone monitors listed in Table 1 above. Ohio EPA has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Ohio remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Ohio, has the legal authority to enforce and implement the requirements of the maintenance plan for the Columbus area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Ohio EPA will continue to operate the current ozone monitors located in the Columbus area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, Ohio EPA will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Ohio was compiled for 2014. Point source facilities covered by Ohio's emission statement rule, Ohio Administrative Code Chapter 3745–24, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Columbus area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Columbus area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.079 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The studies will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The studies will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Ohio's plan, an action level response is triggered when a two-year average fourth high value of 0.076 ppm or greater is monitored within the maintenance area. A violation of the standard within the maintenance area also triggers an action level response. When an action level response is triggered, Ohio EPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

1. Adopt VOC RACT on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.
2. Apply VOC RACT to smaller existing sources.
3. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:
   a. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;
   b. traffic flow and transit improvements; and
   c. other new or innovative transportation measures not yet in widespread use that affected local governments deem appropriate.
4. Alternative fuel and diesel retrofit programs for fleet vehicle operations.
5. Require VOC or NO_X emission offsets for new and modified major sources.
6. Increase the ratio of emission offsets required for new sources.
7. Require VOC or NO_X controls on new minor sources (less than 100 tons).
8. Adopt NO_X RACT for existing combustion sources.
9. High volume, low pressure coating application requirements for autobody facilities.
10. Requirements for cold cleaner degreaser operations (low vapor pressure solvents).

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Ohio EPA has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Columbus area to cover an additional ten years beyond the initial 10 year maintenance period. Thus, EPA proposes to find that the maintenance plan SIP revision submitted by Ohio EPA for the Columbus area meets the requirements of section 175A of the CAA.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy

SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Columbus area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Ohio's maintenance plan includes NO_X and VOC MVEBs for the Columbus area for 2030 and 2020, the last year of the maintenance period and an interim year. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Ohio's April 21, 2016, maintenance plan SIP submission, including the VOC and NO_X MVEBs for the Columbus area was open for public comment on EPA's adequacy Web site on July 22, 2016, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 and 2030 MVEBs for the Columbus area closed on August 22, 2016. No comments on the submittal were received during the adequacy comment period. The submitted maintenance plan, which included the MVEBs, was endorsed by the Governor (or his or her designee) and was subject to a state public hearing. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 8-hour ozone standard.

TABLE 12—MVEBS FOR THE COLUMBUS AREA, TPSD

	Attainment year 2014 onroad emissions	2020 Estimated onroad emissions	2020 Mobile safety margin allocation	2020 MVEBs	2030 Estimated onroad emissions	2030 Mobile safety margin allocation	2030 MVEBs
VOC	68.06	44.05	6.61	50.66	38.53	5.78	44.31
NO_X	138.65	86.56	12.98	90.54	74.03	11.10	85.13

As shown in Table 12, the 2020 and 2030 MVEBs exceed the estimated 2020 and 2030 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Ohio EPA allocated a portion of the safety margin (described further below) to the mobile sector. Ohio has demonstrated that the Columbus area can maintain the 2008 ozone NAAQS with mobile source emissions in the area of 50.66 TPSD and 44.31 TPSD of VOC and 90.54 TPSD and 85.13 TPSD of NO_X in 2020 and 2030, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Columbus area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 11, the emissions in the Columbus area are projected to have safety margins of 78.74 TPSD for NO_X and 35.54 TPSD for VOC in 2030 (the difference between the attainment year, 2014, emissions and the projected 2030 emissions for all sources in the Columbus area). Similarly, there is a safety margin of 59.14 TPSD for NO_X and 28.55 TPSD for VOC in 2020. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, Ohio is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2020, Ohio is allocating 6.61 TPSD and 12.98 TPSD of the VOC and NO_X safety margins, respectively. In 2030, Ohio is allocating 5.78 TPSD and 11.10 TPSD of the VOC and NO_X safety margins, respectively. Ohio EPA is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2020 and 2030 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2020 and 2030 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Proposed Actions

EPA is proposing to determine that the Columbus nonattainment is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Ohio portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio EPA's request to change the legal designation of the Columbus area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Columbus area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Columbus area.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: September 19, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–23293 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0421; FRL–9953–16–Region 4]

Air Plan Approval; Mississippi; Interstate Transport (Prongs 1 and 2) for the 2010 1-hour NO_2 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MS DEQ), on May 23, 2016, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO_2) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an "infrastructure SIP." Specifically, EPA is proposing to approve Mississippi's May 23, 2016, SIP submission addressing prongs 1 and 2, to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO_2 NAAQS in any other state.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–

OAR–2016–0421 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Ward can be reached by telephone at (404) 562–9140 or via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this proposed action, EPA is proposing to approve Mississippi's May 23, 2016, SIP submission addressing prong 1 and prong 2 requirements for the 2010 1-hour NO_2 NAAQS. All other applicable infrastructure SIP requirements for Mississippi for the 2010 1-hour NO_2 NAAQS have been addressed in separate rulemakings. *See* 80 FR 14019 (March 18, 2015), 81 FR 32707 (May 24, 2016), and 81 FR 33139 (May 25, 2016). A brief background regarding the 2010 1-hour NO_2 NAAQS is provided below.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO_X). NO_2 is the component of greatest concern and is used as the indicator for the larger group of NO_X. Emissions that lead to the formation of NO_2 generally also lead to the formation of other NO_X. Therefore, control measures that reduce NO_2 can generally be expected to reduce population exposures to all gaseous NO_X which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. For comprehensive information on 2010 1-hour NO_2 NAAQS, please refer to the **Federal Register** notice cited above.

II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "each such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of Title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the "applicable requirements" of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the Prevention of Significant Deterioration (PSD) program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

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[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[2] *See, e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including Greenhouse Gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; [10] (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[11] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[11] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[14]

III. What are the prongs 1 and 2 requirements?

For each new NAAQS, section 110(a)(2)(D)(i)(I) of the CAA requires each state to submit a SIP revision that contains adequate provisions prohibiting emissions activity in the state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the "good neighbor" provision of the CAA. Section 110(a)(2)(D)(i)(I) requires the elimination of upwind state emissions that significantly contribute to nonattainment or interference with maintenance of the NAAQS in another state.

IV. What is EPA's analysis of how Mississippi addressed prongs 1 and 2?

Mississippi has concluded that it does not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour NO_2 NAAQS in any other state for the following reasons: (1) All areas in Mississippi and in the surrounding states are designated as unclassifiable/attainment for the 2010 1-hour NO_2 NAAQS; (2) monitored ambient NO_2 concentrations in the State and surrounding states are well below the 2010 1-hour NO_2 NAAQS; (3) total NO_X emissions in the State and surrounding states are trending downward; and (4) there are SIP-approved state regulations in place to control NO_X emissions in the State. EPA preliminarily agrees with the State's conclusion based on the rationale discussed below.

First, there are no designated nonattainment areas for the 2010 1-hour NO_2 NAAQS. On February 17, 2012 (77 FR 9532), EPA designated the entire country as "unclassifiable/attainment" for the 2010 1-hour NO_2 NAAQS, stating that "available information does not indicate that the air quality in these areas exceeds the 2010 1-hour NO_2 NAAQS."

Second, as part of its May 23, 2016, SIP submittal, Mississippi examined NO_2 monitoring data from 2009–2014 in the State and surrounding states. According to this data, the design values during this period are well below the 100 ppb standard with Alabama and Tennessee having the highest 2012–2014 design values (51 ppb).

Third, Mississippi's submittal provides total NO_X emissions data reported to the National Emissions Inventory in 2005, 2008, and 2011 for Mississippi and the surrounding states. This data shows that NO_X emissions generally decreased over this time period in these states.

Fourth, in its submittal, Mississippi identifies SIP-approved regulations APC–S–1 ("Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants"), APC–S–2 ("Permit Regulation for the Construction and/or Operation of Air Emissions Equipment"), APC–S–3 ("Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes"), and APC–S–5 ("Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality") as regulations that control NO_X emitting sources in the State. APC–

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[12] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[13] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

S–2, for example, contains permitting requirements that require controls and emission limits for certain NO_X emitting sources in the State. These permitting requirements help ensure that no new or modified NO_X sources in the State subject to these permitting regulations will significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO_2 NAAQS.

For all the reasons discussed above, EPA has preliminarily determined that Mississippi does not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour NO_2 NAAQS in any other state and that Mississippi's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

V. Proposed Action

As described above, EPA is proposing to approve Mississippi's May 23, 2016, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO_2 NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 15, 2016.

Kenneth R. Lapierre,

Acting Regional Administrator, Region 4.

[FR Doc. 2016–23300 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0799; FRL–9953–17–Region 4]

Air Plan Approval; Tennessee; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on April 19, 2013. Tennessee's April 19, 2013, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve Tennessee's Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0799 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state was required to submit its first implementation plan addressing regional haze visibility impairment to EPA no later than December 17, 2007. *See* 40 CFR 51.308(b). Tennessee submitted its regional haze plan on April 4, 2008, and like many other states subject to the Clean Air Interstate Rule (CAIR), relied on CAIR to satisfy best available retrofit technology (BART) requirements for emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) from electric generating units (EGUs) in the State. On April 24, 2012, EPA finalized a limited approval of Tennessee's April 4, 2008, regional haze plan as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.[2] Also in this April 24, 2012, action, EPA finalized a limited disapproval of Tennessee's regional haze plan because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. *See* 77 FR 24392. On June 7, 2012, EPA promulgated Federal Implementation Plans (FIPs) to replace reliance on CAIR with reliance on the Cross State Air Pollution Rule (CSAPR) to address deficiencies in CAIR-dependent regional haze plans of several states, including Tennessee's regional haze plan.[3] *See* 77 FR 33642.

Each state is also required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze plan. *See* 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze plan.

On April 19, 2013, as required by 40 CFR 51.308(g), TDEC submitted to EPA, in the form of a revision to Tennessee's SIP, a report on progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within the State. This submission also includes a negative declaration pursuant to 40 CFR 51.308(h)(1) that the State's regional haze plan is sufficient in meeting the requirements of the Regional Haze Rule. EPA is proposing to approve Tennessee's Progress Report on the basis that it satisfies the requirements of 40 CFR 51.308(g) and 51.308(h).

II. Requirements for the Regional Haze Progress Report and Adequacy Determination

A. Regional Haze Progress Report

Under 40 CFR 51.308(g), states must submit a regional haze progress report as a SIP revision every five years and must address, at a minimum, the seven elements found in 40 CFR 51.308(g). As described in further detail in section III below, 40 CFR 51.308(g) requires: (1) A description of the status of measures in the approved regional haze plan; (2) a summary of emissions reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; (6) an assessment of the sufficiency of the approved regional haze plan; and (7) a review of the state's visibility monitoring strategy.

B. Adequacy Determination of the Current Regional Haze Plan

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report, a determination of the adequacy of their existing regional haze plan and to take one of four possible actions based on information in the progress report. As described in further detail in section III below, 40 CFR 51.308(h) requires states to: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze plan is needed; (2) provide notification to EPA (and to other state(s) that participated in the regional planning process) if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional planning process, and collaborate with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another country; or (4) revise its regional haze plan to address deficiencies within one year if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emissions from sources within the state.

III. What is EPA's Analysis of Tennessee's Regional Haze Progress Report and Adequacy Determination?

On April 19, 2013, TDEC submitted a revision to Tennessee's regional haze plan to address progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within Tennessee. This submittal also includes a determination of the adequacy of the State's existing regional haze plan. Tennessee has two Class I areas within its borders: Great Smoky Mountains National Park and Joyce Kilmer-Slickrock Wilderness Area. These areas are located partially in North Carolina and Tennessee. In its regional haze plan, the State also identified, through an area of influence modeling analysis based on back trajectories, four Class I areas in three neighboring states potentially impacted by Tennessee sources: Cohutta Wilderness Area in Georgia; Mammoth Cave National Park in Kentucky; and Linville Gorge and Shining Rock Wilderness areas in North Carolina. *See* 76 FR 33662, 33683 (June 9, 2011).

A. Regional Haze Progress Report SIPs

The following sections summarize: (1) Each of the seven elements that must be addressed by a progress report under 40 CFR 51.308(g); (2) how Tennessee's Progress Report addressed each element; and (3) EPA's analysis and proposed determination as to whether the State satisfied each element.

1. Status of Control Measures

40 CFR 51.308(g)(1) requires a description of the status of implementation of all measures included in the regional haze plan for

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[1] Located in 40 CFR part 51, subpart P.

[2] This April 24, 2012, action did not include the BART determination for Eastman Chemical Company (Eastman). On November 27, 2012, EPA finalized approval of the BART requirements for Eastman that were provided in the April 4, 2008, regional haze SIP, as later modified and supplemented on May 14, 2012, and May 25, 2012 (77 FR 70689).

[3] Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, and CSAPR is now in effect. *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118 (D.C. Cir. 2015).

achieving RPGs for Class I areas both within and outside the state.

The State evaluated the status of measures included in its 2008 regional haze plan in accordance with 40 CFR 51.308(g)(1). Specifically, in its Progress Report, Tennessee summarizes the status of the emissions reduction measures that were included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the State in developing its regional haze plan. The measures include, among other things, applicable federal programs (*e.g.,* mobile source rules, Maximum Achievable Control Technology standards), federal consent agreements, and federal and state control strategies for EGUs.

The State also discusses the status of several measures that were not included in the final VISTAS emissions inventory and were not relied upon in the initial regional haze plan to meet RPGs, including EPA's Mercury and Air Toxics Rule and a 2011 federal consent agreement with the Tennessee Valley Authority (TVA). The State notes that the emissions reductions from these measures will help ensure that Class I areas impacted by Tennessee sources achieve their RPGs.

Although Tennessee determined in its regional haze SIP that no additional controls for sources in the State were necessary to obtain reasonable progress during the first implementation period, Tennessee's Progress Report identifies six out-of-state sources located in the area of influence of one or more of Tennessee's Class I areas using the State's methodology for determining sources eligible for a reasonable progress control determination. These six sources were evaluated by their respective states for reasonable progress. The Progress Report summarizes the reasonable progress control determinations made for these six facilities (five facilities consisting of 12 EGUs, one non-EGU facility) in the surrounding States of Alabama, Georgia, North Carolina, and South Carolina and, where applicable, provides a status of the required controls. Of the 12 EGUs at five facilities in these states, nine EGUs already have scrubbers installed and three EGUs located in South Carolina were retired.[4]

In addition, the State provides an update on the status of EGUs in Tennessee identified by the states of Maine, New Jersey, New Hampshire and Vermont as contributing to visibility impairment at the following Class I areas located in those states based on 2002 emissions: Acadia National Park (ME), Great Gulf Wilderness Area and Presidential Range—Dry River Wilderness Area (NH), Lye Brook Wilderness Area (VT), and Brigantine Wilderness Area (NJ)). These states are members of the Mid-Atlantic/Northeast Visibility Union (MANE–VU), which identified 167 EGU "stacks," five of which are in Tennessee, as contributing significantly to visibility impairment at MANE–VU Class I areas in 2002. The five Tennessee EGU stacks identified by MANE–VU are located at TVA's Gallatin, John Sevier, Johnsonville, and Kingston plants. MANE–VU asked Tennessee to control the SO_2 emissions from these EGUs with a 90 percent control efficiency and to adopt a control strategy to provide a 28 percent reduction in SO_2 emissions from non-EGU emission sources that would be equivalent to MANE–VU's proposed low sulfur residential fuel oil strategy.

Tennessee summarizes in its Progress Report its February 20, 2008, response to the four MANE–VU states' letters at the time of the State's regional haze SIP development, indicating that the control schedule for the five identified EGU stacks is reasonable and adequately limits the emissions of SO_2 for visibility impairment purposes. See Table 1 below.

TABLE 1—TENNESSEE EGU STACKS IDENTIFIED BY MANE–VU STATES

Plant name	Tennessee's February 20, 2008, response
TVA Gallatin	This plant uses low-sulfur fuel at an emission rate of 0.61 lbs SO_2/mmBtu.
TVA John Sevier	TVA has announced plans to install flue gas desulfurization (FGD) by 2012.
TVA Johnsonville	This plant is burning a low-sulfur fuel (1.5 lbs SO_2/mmBtu) with TVA performing testing to determine the viability of lower sulfur coal with the objective of going to 0.9 lbs SO_2/mmBtu before 2015.
TVA Kingston	FGD is being installed on this stack with a construction complete date scheduled for 2010.
TVA Kingston	FGD is being installed on this stack with a construction complete date scheduled for 2010.

As part of its Progress Report, Tennessee notes that these EGU stacks are either currently controlled with low sulfur coal or scrubbers with a 95 percent SO_2 control efficiency, are shutdown, or are scheduled for shutdown by 2017.[5] Tennessee notes that the requested EGU SO_2 reductions are exceeded through improved removal efficiencies at these five EGUs, the shutdown of eight EGUs at the four TVA plants as of 2015, and the scheduled shutdown of an additional EGU by 2017, noting that additional reductions are expected for the remainder of the planning period. Tennessee also affirms that its Progress Report shows progress with reducing non-EGU SO_2 emissions.

EPA proposes to find that Tennessee's analysis adequately addresses 40 CFR 51.308(g)(1) for the reasons discussed below. The State documents the implementation status of measures from its regional haze plan in addition to describing additional measures not originally accounted for in the final VISTAS emissions inventory that came into effect since the VISTAS analyses for the regional haze plan were completed. Tennessee reviewed the status of BART requirements for the four BART-subject sources in the State: Alcoa—South Plant, DuPont—Old Hickory, Eastman Chemical Company, and TVA—Cumberland Fossil Plant. The State's Progress Report also provides detailed information on EGU control strategies in its regional haze plan and the status of existing and future expected controls for Tennessee's EGUs because, in its regional haze plan, Tennessee identified SO_2 emissions from coal-fired EGUs as the key contributor to regional haze in the VISTAS region. In its regional haze plan, Tennessee determined that no additional controls of sources in the State were reasonable for the first implementation period. Additionally, the State summarizes the emissions controls included in the regional haze plan for Tennessee sources in the area of influence of other states' Class I areas and the status of these controls.

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[4] See Tennessee Progress Report narrative, Table 2–5, page 26.

[5] See Table 2–4 on pages 22–24 of Tennessee's Progress Report.

2. Emissions Reductions and Progress

40 CFR 51.308(g)(2) requires a summary of the emissions reductions achieved in the state through the measures subject to 40 CFR 51.308(g)(1).

In its regional haze plan and Progress Report, Tennessee focuses its assessment on SO_2 emissions from EGUs because of VISTAS' findings that ammonium sulfate accounted for more than 70 percent of the visibility-impairing pollution in the VISTAS states[6] and that SO_2 point source emissions are projected to represent more than 95 percent of the total SO_2 emissions in the VISTAS states in 2018.[7] As discussed in section III.A.5, below, Tennessee determined that sulfates continue to be the largest contributor to regional haze for Class I areas in the State.

In its Progress Report, Tennessee presents SO_2 emissions data for 33 EGUs at seven facilities in the State that were projected to have controls installed, or projected to retire, by 2018 in Tennessee's regional haze SIP. Actual SO_2 emissions reductions from 2002 to 2011 for these Tennessee EGUs (199,568 tons per year (tpy)) are already close to the projected SO_2 emissions reductions from 2002 to 2018 estimated in Tennessee's regional haze plan for these EGUs (207,540 tpy).[8] Tennessee also includes SO_2 and NOx emissions data from 2002–2010 for EGUs in Tennessee subject to reporting under the Acid Rain Program. This data shows a decline in these emissions over this time period and that the SO_2 reductions are higher than those estimated for these units in the State's regional haze SIP between 2002–2018.

EPA proposes to conclude that Tennessee has adequately addressed 40 CFR 51.308(g)(2). As discussed above, the State provides estimates, and where available, actual emissions reductions of SO_2 and NO_X at EGUs in the State resulting from the measures relied upon in its regional haze plan. The State appropriately focused on SO_2 emissions from its EGUs in its Progress Report because the State had previously identified these emissions as the most significant contributors to visibility impairment at Tennessee's Class I areas and those areas that Tennessee sources impact.

3. Visibility Progress

40 CFR 51.308(g)(3) requires that states with Class I areas provide the following information for the most impaired and least impaired days for each area, with values expressed in terms of five-year averages of these annual values:[9] (i) Current visibility conditions; (ii) the difference between current visibility conditions and baseline visibility conditions; and (iii) the change in visibility impairment over the past five years.

Tennessee provides figures with visibility monitoring data that address the three requirements of 40 CFR 51.308(g)(3) for the State's two Class I areas. Tennessee reported current conditions as the 2006–2010 five-year time period and used the 2000–2004 baseline period for its Class I areas.[10] Table 2, below, shows the current visibility conditions and the difference between current visibility conditions and baseline visibility conditions. Table 3 shows the changes in visibility from 2006–2010 in terms of five-year averages.

TABLE 2—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN CLASS I AREAS IN TENNESSEE

Class I area	Baseline (2000–2004)	Current (2006–2010)	Difference	RPG (2018)
20% Worst Days:				
Great Smoky Mountains National Park	30.3	26.6	−3.7	23.5
Joyce Kilmer-Slickrock	30.3	26.6	−3.7	23.5
20% Best Days:				
Great Smoky Mountains National Park	13.6	12.3	−1.3	12.1
Joyce Kilmer-Slickrock	13.6	12.3	−1.3	12.1

TABLE 3—CHANGES IN 5-YEAR VISIBILITY AVERAGES FROM 2006–2010

Class I area	2006	2007	2008	2009	2010
20% Worst Days:					
Great Smoky Mountains National Park	30.4	30.6	29.8	28.5	26.6
Joyce Kilmer-Slickrock	30.4	30.6	29.8	28.5	26.6
20% Best Days:					
Great Smoky Mountains National Park	13.3	13.2	13.1	12.4	12.3
Joyce Kilmer-Slickrock	13.3	13.2	13.1	12.4	12.3

All Tennessee Class I areas saw an improvement in visibility between baseline and 2006–2010 conditions and an overall decline in the five-year average visibility averages from 2006–2010.

EPA proposes to conclude that Tennessee has adequately addressed 40 CFR 51.308(g)(3) because the State provides the information regarding visibility conditions and visibility changes necessary to meet the requirements of the regulation. The Progress Report includes current conditions based on the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data for the years 2006–2010, the difference between current visibility conditions and baseline visibility conditions, and the change in visibility impairment over the five-year period 2006–2010.

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[6] Sulfate levels on the 20 percent worst days account for 60–70 percent of the visibility impairment at both of Tennessee's Class I areas. For additional information, see Tennessee's April 4, 2008, regional haze plan at page 13.

[7] For additional information, see Tennessee's April 4, 2008, regional haze plan at page 81.

[8] Table 2–4, page 31, and Appendix A of Tennessee's Progress Report.

[9] The "most impaired days" and "least impaired days" in the regional haze rule refers to the average visibility impairment (measured in deciviews) for the 20 percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. 40 CFR 51.301.

[10] For the first regional haze plans, "baseline" conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999). Joyce Kilmer-Slickrock Wilderness Area does not have a visibility monitor; therefore, visibility data from Great Smoky Mountains National Park is used for both areas given their proximity. For more information see 76 FR 33669.

4. Emissions Tracking

40 CFR 51.308(g)(4) requires an analysis tracking emission changes of visibility-impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory.

In its Progress Report, Tennessee presents data from a statewide actual emissions inventory for 2008 and compares this data to the baseline emissions inventory for 2002 (actual and typical emissions) from its regional haze plan. For the typical 2002 stationary point source emissions inventory, Tennessee adjusted the EGU emissions for a typical year so that if sources were shut down or operating above or below normal, the emissions are normalized to a typical emissions inventory year. The typical year data is used to develop projected typical future year emissions inventories. The pollutants inventoried include volatile organic compounds (VOC), ammonia (NH_3) NO_X, coarse particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$), and SO_2. The emissions inventories include the following source classifications: Point, area, biogenics, non-road mobile, and on-road mobile sources.

Tennessee includes the actual and typical emissions inventories from its regional haze plan for 2002, and summarizes emissions data from EPA's 2008 National Emissions Inventory (NEI).[11] Tennessee's analysis shows that 2008 emissions are lower than both the actual and typical 2002 emissions.

Tennessee estimated on-road mobile source emissions in the 2008 inventory using the MOVES model. This model tends to estimate higher emissions for NO_X and PM than its previous counterpart, the MOBILE6.2 model, used by the State to estimate on-road mobile source emissions for the 2002 inventories. Despite the change in methodology, a declining trend in all pollutants can be seen between 2002 and 2008 when comparing Tables 4 and 5 to Table 6.

TABLE 4—2002 ACTUAL EMISSIONS INVENTORY SUMMARY FOR TENNESSEE (TPY)

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	85,254	221,651	39,973	49,814	1,817	413,755
Area	153,509	17,936	42,925	212,972	34,412	29,942
On-Road Mobile	179,807	238,577	3,949	5,371	6,625	9,226
Non-Road Mobile	66,450	96,827	6,458	6,819	43	10,441
Biogenics	894,214	18,081	0	0	0	0
Total	1,379,234	593,072	93,305	274,976	42,897	463,364

TABLE 5—2002 TYPICAL EMISSIONS INVENTORY SUMMARY FOR TENNESSEE (TPY)

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	85,218	216,481	39,298	49,040	1,810	399,750
Area	153,783	18,061	43,410	213,538	34,439	29,977
On-Road Mobile	179,807	238,577	3,949	5,371	6,625	9,226
Non-Road Mobile	66,450	96,827	6,458	6,819	43	10,441
Biogenics	894,214	18,081	0	0	0	0
Total	1,379,472	588,027	93,115	274,768	42,917	449,394

TABLE 6—2008 ACTUAL EMISSIONS INVENTORY SUMMARY FOR TENNESSEE (TPY)

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	38,155	134,162	15,551	20,734	1,193	258,033
Area	104,305	43,388	46,672	194,631	34,898	65,026
On-Road Mobile	80,476	213,973	8,441	10,445	3,167	3,903
Non-Road Mobile	50,525	35,593	3,305	3,470	38	591
Biogenics	786,087	13,682	0	0	0	0
Total	1,059,548	440,798	73,969	229,280	39,296	327,553

EPA proposes to conclude that Tennessee has adequately addressed 40 CFR 51.308(g)(4). Tennessee tracked changes in emissions of visibility-impairing pollutants from 2002–2008 for all source categories and analyzed trends in emissions from 2002–2008, the most current quality-assured data available for these units at the time of progress report development. While ideally the five-year period to be analyzed for emissions inventory changes is the time period since the current regional haze plan was submitted, there is an inevitable time lag in developing and reporting complete emissions inventories once quality-assured emissions data becomes available. Therefore, EPA believes that there is some flexibility in the five-year time period that states can select.

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[11] The 2008 NEI data was the most recent NEI data available at the time that Tennessee submitted its Progress Report.

5. Assessment of Changes Impeding Visibility Progress

40 CFR 51.308(g)(5) requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the state's sources.

In its Progress Report, Tennessee documented that sulfates, which are formed from SO_2 emissions, continue to be the biggest single contributor to regional haze for Class I areas in the State and therefore focused its analysis on large SO_2 emissions from point sources. In addressing the requirements at 40 CFR 51.308(g)(5), Tennessee demonstrates that sulfate contributions to visibility impairment have decreased from 2006 to 2010 along with an improvement in visibility at Class I areas in Tennessee, and examines other potential pollutants of concern affecting visibility at these areas. The State presents data for the 20 percent worst days showing that ammonium sulfate is responsible for 74 percent of the regional haze at Tennessee's two Class I areas for the period 2006–2010, with primary organic matter as the next largest contributor at 12 percent. The State notes that there are no significant changes in anthropogenic emissions that have impeded progress in reducing emissions and improving visibility in Class I areas impacted by Tennessee sources. Furthermore, the Progress Report shows that the State is on track to meeting its 2018 RPGs for Class I areas in Tennessee. For these reasons, EPA proposes to conclude that Tennessee's Progress Report has adequately addressed 40 CFR 51.308(g)(5).

6. Assessment of Current Strategy

40 CFR 51.308(g)(6) requires an assessment of whether the current regional haze plan is sufficient to enable the state, or other states, to meet the RPGs for Class I areas affected by emissions from the state.

The State believes that it is on track to meet the 2018 RPGs for the Tennessee Class I areas and will not impede Class I areas outside of Tennessee from meeting their RPGs based on the trends in visibility and emissions presented in its Progress Report. In its Progress Report, Tennessee provided reconstructed light extinction figures for the 20 percent worst days for Great Smoky Mountains National Park for 2006 through 2010, noting similar results at Joyce Kilmer Class I area. The 20 percent worst days extinction clearly demonstrates that sulfates continue to be the largest contributor to visibility impairment at these Class I areas, with stationary point sources being the largest source of SO_2 emissions in Tennessee. As identified in Tables 3–1 and 3–2 and Appendix A of the Progress Report, SO_2 emissions from EGUs in Tennessee have decreased from 2002 to 2011. Also, the emissions data provided in Table 3–1 of the Progress Report show a declining trend in NO_X emissions from 2002 to 2010 for EGUs in Tennessee. Tennessee also provides visibility data for the State's two Class I areas (Great Smoky Mountains National Park and Joyce Kilmer-Slickrock Wilderness Area) and the Class I areas potentially impacted by the State's sources (Cohutta Wilderness Area (Cohutta) in Georgia, Mammoth Cave National Park (Mammoth Cave) in Kentucky, and Linville Gorge and Shining Rock Wilderness Areas in North Carolina)) and notes that this data shows that these areas are on track to achieve their RPGs by 2018.[12]

EPA proposes to conclude that Tennessee has adequately addressed 40 CFR 51.308(g)(6). EPA views this requirement as a qualitative assessment that should evaluate emissions and visibility trends and other readily available information, including expected emissions reductions associated with measures with compliance dates that have not yet become effective. In its assessment, the State references the improving visibility trends and the downward emissions trends in the State, with a focus on SO_2 emissions from Tennessee EGUs. These trends support the State's determination that the State's regional haze plan is sufficient to meet RPGs for Class I areas within and outside the State impacted by Tennessee sources.

7. Review of Current Monitoring Strategy

40 CFR 51.308(g)(7) requires a review of the state's visibility monitoring strategy and an assessment of whether any modifications to the monitoring strategy are necessary.

Tennessee's Progress Report summarizes the existing monitoring network in the State to monitor visibility in Tennessee's Class I areas and concludes that no modifications to the existing visibility monitoring strategy are necessary. The primary monitoring network for regional haze, both nationwide and in Tennessee, is the IMPROVE network. There is currently one IMPROVE site in Tennessee which serves as the monitoring site for both the Great Smoky Mountains National Park and Joyce Kilmer-Slickrock Wilderness Area.

The State also explains the importance of the IMPROVE monitoring network for tracking visibility trends at Class I areas in Tennessee. Tennessee states that data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the 5-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data, and thus, the State notes that the monitoring data from the IMPROVE sites needs to be readily accessible and to be kept up to date. The Visibility Information Exchange Web System Web site has been maintained by VISTAS and the other Regional Planning Organizations to provide ready access to the IMPROVE data and data analysis tools.

In addition to the IMPROVE measurements, some ongoing long-term limited monitoring supported by Federal Land Managers provides additional insight into progress toward regional haze goals. Tennessee benefits from the data from these measurements, but is not responsible for associated funding decisions to maintain these measurements into the future.

In addition, TDEC and the local air agencies in the State operate a comprehensive $PM_{2.5}$ network of the filter-based federal reference method monitors, continuous mass monitors, and filter-based speciated monitors. These $PM_{2.5}$ measurements help the TDEC characterize air pollution levels in areas across the State, and therefore aid in the analysis of visibility improvement in and near the Class I areas in Tennessee.

EPA proposes to conclude that Tennessee has adequately addressed the sufficiency of its monitoring strategy as required by 40 CFR 51.308(g)(7). The State reaffirmed its continued reliance upon the IMPROVE monitoring network; assessed its entire visibility monitoring network, including additional continuous sulfate and $PM_{2.5}$ monitors, used to further understand visibility trends in the State; and determined that no changes to its monitoring strategy are necessary.

B. Determination of Adequacy of Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report. The following section summarizes: (1) The action taken by Tennessee under 40 CFR 51.308(h); (2) Tennessee's rationale for the selected action; and (3) EPA's analysis and proposed determination regarding the State's action.

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[12] See pages 35–37 and 48–55 of Tennessee's Progress Report.

In its Progress Report, Tennessee took the action provided for by 40 CFR 51.308(h)(1), which allows a state to submit a negative declaration to EPA if the state determines that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the state's sources. The basis for the State's negative declaration is the findings from the Progress Report, including the findings that: Visibility has improved at Class I areas in Tennessee and at Class I areas impacted by sources in Tennessee; overall emissions of visibility-impairing pollutants from the State's sources have decreased from 2002 to 2008 by approximately 25 percent[13] and emissions of SO_2 from certain EGUs in Tennessee have decreased by approximately 200,000 tons from 2002–2010;[14] and additional EGU control measures not relied upon in the State's regional haze plan have occurred or will occur in the implementation period and are expected to continue to trend downward. EPA proposes to conclude that Tennessee has adequately addressed 40 CFR 51.308(h) because the visibility trends at the Class I areas impacted by the State's sources and the emissions trends of the State's largest emitters of visibility-impairing pollutants indicate that the RPGs for Class I areas impacted by source in Tennessee will be met.

IV. What action is EPA proposing to take?

EPA is proposing to approve Tennessee's Regional Haze Progress Report SIP revision, submitted by the State on April 19, 2013, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 15, 2016.

Kenneth R. Lapierre,

Acting Regional Administrator, Region 4.

[FR Doc. 2016–23291 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0269; FRL–9953–12–Region 5]

Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Cincinnati-Hamilton, Ohio-Kentucky-Indiana area is attaining the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and to approve a request from the Ohio Environmental Protection Agency (Ohio EPA) to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Cincinnati-Hamilton area includes Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; Lawrenceburg Township in Dearborn County, Indiana; and, Boone, Campbell, and Kenton Counties in Kentucky. Ohio EPA submitted this request on April 21, 2016. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2008 8-hour ozone standard through 2030 in the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the state's 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Ohio and Indiana portion of the Cincinnati-Hamilton area.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0269 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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[13] See page 42 of Tennessee's Progress Report.

[14] As discussed earlier, these EGUs were projected to have controls installed, or projected to retire, by 2018 in Tennessee's regional haze SIP.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What are the actions EPA is proposing?
II. What is the background for these actions?
III. What are the criteria for redesignation?
IV. What is EPA's analysis of Ohio's redesignation request?
  A. Has the Cincinnati-Hamilton area attained the 2008 8-hour ozone NAAQS?
  B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the Cincinnati-Hamilton area, and does the Ohio portion of the area have a fully approved SIP under section 110(k) of the CAA?
  1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Ohio Portion of the Cincinnati-Hamilton Area for Purposes of Redesignation
  2. The Ohio Portion of the Cincinnati-Hamilton Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA
  C. Are the air quality improvements in the Cincinnati-Hamilton area due to permanent and enforceable emission reductions?
  1. Permanent and Enforceable Emission Controls Implemented
  2. Emission Reductions
  3. Meteorology
  D. Does Ohio have a fully approvable ozone maintenance plan for the Cincinnati-Hamilton area?
  1. Attainment Inventory
  2. Has the state documented maintenance of the ozone standard in the Cincinnati-Hamilton area?
  3. Continued Air Quality Monitoring
  4. Verification of Continued Attainment
  5. What is the contingency plan for the Cincinnati-Hamilton area?
V. Has the state adopted approvable motor vehicle emission budgets?
  A. Motor Vehicle Emission Budgets
  B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cincinnati-Hamilton area?
  C. What is a safety margin?
VI. Proposed Actions
VII. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Cincinnati-Hamilton nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Ohio portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio EPA's request to change the legal designation of the Ohio portion of the Cincinnati-Hamilton area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Cincinnati-Hamilton area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati-Hamilton area. The adequacy comment period for the MVEBs began on July 22, 2016, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on August 22, 2016. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated August 23, 2016, EPA informed Ohio EPA that we found the 2020 and 2030 MVEBs to be adequate for use in transportation conformity analyses. Please see section V.B. of this rulemaking, "What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Ohio portion of the Cincinnati-Hamilton area," for further explanation of this process. Therefore, we find adequate, and are proposing to approve, the States' 2020 and 2030 MVEBs for transportation conformity purposes.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Cincinnati-Hamilton area was designated as a marginal nonattainment area for the 2008 ozone NAAQS on May 21, 2012 (77 FR 30088) (effective July 20, 2012).

In a final implementation rule for the 2008 ozone NAAQS (SIP Requirements Rule),[1] EPA established ozone standard attainment dates based on table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective designation date for areas classified as marginal nonattainment for the 2008 ozone NAAQS. Therefore, the attainment date for the Cincinnati-Hamilton area was July 20, 2015. On May 4, 2016 (81 FR 26697), in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Cincinnati-Hamilton area attained the standard by its July 20, 2015, attainment date for the 2008 ozone NAAQS. EPA's determination was based upon 3 years of complete, quality-assured and certified data for the 2012–2014 time period.

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[1] This rule, titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" and published at 80 FR 12264 (March 6, 2015), addresses nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR), emission inventories, and the timing requirements for SIP submissions and compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS is revoked.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton. Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Ohio's redesignation request?

A. Has the Cincinnati-Hamilton area attained the 2008 8-hour ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,[2] on average, for the three-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the three-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

On May 4, 2016, in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Cincinnati-Hamilton area attained the standard by its July 20, 2015 attainment date for the 2008 ozone NAAQS. This determination was based upon 3 years of complete, quality-assured and certified data for the 2012–2014 time period. In addition, EPA has reviewed the available ozone monitoring data from monitoring sites in the Cincinnati-Hamilton area for the 2013–2015 time period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Cincinnati-Hamilton area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CINCINNATI-HAMILTON AREA

State	County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 Average (ppm)
Ohio	Butler	39–017–0004	0.068	0.070	0.070	0.069
		39–017–0018	0.068	0.069	0.070	0.069

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[2] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2012–2014 and 2013–2015 time periods, the ozone seasons for Ohio, Indiana, and Kentucky were April–October, April–September, and March–October, respectively. Beginning in 2016, the ozone seasons for Ohio, Indiana and Kentucky are March–October. See, 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CINCINNATI-HAMILTON AREA—Continued

State	County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 Average (ppm)
		39–017–9991	0.069	0.069	0.068	0.068
	Clermont	39–025–0022	0.066	0.068	0.070	0.068
	Clinton	39–027–1002	0.064	0.070	0.070	0.068
	Hamilton	39–061–0006	0.069	0.070	0.072	0.070
		39–061–0010	0.064	0.073	0.070	0.069
		39–061–0040	0.069	0.069	0.071	0.069
	Warren	39–165–0007	0.067	0.071	0.071	0.069
Kentucky	Boone	21–015–0003	0.059	0.062	0.062	0.061
	Campbell	21–037–3002	0.072	0.071	0.071	0.071

The 3-year ozone design value for 2013–2015 is 0.071 ppm,[3] which meets the 2008 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Cincinnati-Hamilton area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Cincinnati-Hamilton area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area exceeds the NAAQS after proposal but prior to final approval of the redesignation. Preliminary 2016 data indicate that this area continues to attain the 2008 ozone NAAQS. As discussed in section IV.D.3. below, Ohio EPA has committed to continue monitoring ozone in this area to verify maintenance of the ozone standard.

B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the Cincinnati-Hamilton area, and does the Ohio portion of the area have a fully approved SIP under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA proposes to find that Ohio has a fully approved SIP under section 110(k) of the CAA. Additionally, EPA proposes to find that the Ohio SIP satisfies the criterion that it meet applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). In making these proposed determinations, EPA ascertained which CAA requirements are applicable to the Cincinnati-Hamilton area and the Ohio SIP and, if applicable, whether the required Ohio SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Ohio Portion of the Cincinnati-Hamilton Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call.[4]

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[3] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

[4] On October 27, 1992 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone

Continued

However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On October 16, 2014 (79 FR 62019), EPA approved elements of the SIP submitted by Ohio to meet the requirements of section 110 for the 2008 ozone standard. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Cincinnati-Hamilton area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's 8-hour ozone redesignation request.

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Cincinnati-Hamilton area was classified as marginal under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for marginal ozone nonattainment areas such as the Cincinnati-Hamilton area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's NSR program on January 10, 2003 (68 FR 1366) and February 25, 2010 (75 FR 8496). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio has demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Ohio's PSD program will become effective in the Cincinnati-Hamilton area upon redesignation to attainment. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity)

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precursors. In compliance with EPA's NO_X SIP call, Ohio developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO_X SIP Call on February 4, 2008 (73 FR 6427).

as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[5] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Ohio has an approved conformity SIP for the Cincinnati-Hamilton area. *See* 80 FR 11133 (March 2, 2015).

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. Ohio EPA submitted a 2008 base year emissions inventory for the Cincinnati-Hamilton area on July 18, 2014. EPA approved this emissions inventory as a revision to the Ohio SIP on March 10, 2016 (81 FR 12591).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Cincinnati-Hamilton area is not subject to the section 182(a)(2) RACT "fix up" requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Ohio complied with this requirement for the Cincinnati-Hamilton area under the prior 1-hour ozone NAAQS. *See* 59 FR 23796 (May 9, 1994) and 60 FR 15235 (March 23, 1995).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Ohio's redesignation request for this standard, the Cincinnati-Hamilton area is not subject to the section 182(a)(2)(B) requirement because the Cincinnati-Hamilton area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA amendments.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Ohio currently has a fully-approved part D NSR program in place. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496). As discussed above, Ohio has demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Cincinnati-Hamilton area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule, Ohio will continue to update its emissions inventory at least once every three years. With regard to stationary source emission statements, EPA approved Ohio's emission statement rule on September 27, 2007 (72 FR 54844). On July 18, 2014, Ohio certified that this approved SIP regulation remains in place and remains enforceable for the 2008 ozone standard. EPA approved Ohio's certification on March 10, 2016 (81 FR 12591).

The Ohio portion of the Cincinnati-Hamilton area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Ohio Portion of the Cincinnati-Hamilton Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

Ohio has adopted and submitted and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Ohio SIP for the Cincinnati-Hamilton area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Cincinnati-Hamilton area due to permanent and enforceable emission reductions?

To support the redesignation of an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and other permanent and enforceable emission reductions. EPA has determined that Ohio has demonstrated that that the observed ozone air quality improvement in the Cincinnati-Hamilton area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2011 and 2014. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Cincinnati-Hamilton area and upwind areas have implemented in recent years. In addition, Ohio EPA provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

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[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 27 eastern states, including Ohio, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved Ohio's CAIR regulations into the Ohio SIP on February 1, 2008 (73 FR 6034), and September 25, 2009 (74 FR 48857). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR[6] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_X ozone season emissions budgets for Ohio. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets were originally promulgated to begin on January 1, 2014, and are now scheduled to begin on January 1, 2017. CSAPR will continue to operate under the existing emissions budgets until EPA addresses the D.C. Circuit's remand.

While the reduction in NO_X emissions from the implementation of CSAPR will result in lower concentrations of transported ozone entering the Cincinnati-Hamilton area throughout the maintenance period, EPA is proposing to approve the redesignation of the Ohio portion of the Cincinnati-Hamilton area without relying on those measures within Ohio as having led to attainment of the 2008 ozone NAAQS or contributing to maintenance of that standard. In so doing, we are proposing to determine that the D.C. Circuit's invalidation of the Ohio CSAPR Phase 2 ozone season NO_X emissions budget does not bar today's proposed redesignation.

The improvement in ozone air quality in the Cincinnati-Hamilton area from 2011 (a year when the design value for the area was above the NAAQS) to 2014 (a year when the design value was below the NAAQS) is not due to CSAPR emissions reductions because, as noted above, CSAPR did not go into effect until January 1, 2015, after the area was already attaining the standard. As a general matter, because CSAPR is CAIR's replacement, emissions reductions associated with CAIR will for most areas be made permanent and enforceable through implementation of CSAPR. In addition, EPA has preliminarily determined that the vast majority of reductions in emissions in the Ohio portion of the Cincinnati-Hamilton area from 2011–2014 were due to permanent and enforceable reductions in mobile source VOC and NO_X emissions.

EPA found that from 2011 to 2014, onroad and nonroad mobile source emission reductions accounted for 80 percent of the total NO_X reductions and 98 percent of the total VOC reductions in the Ohio portion of the Cincinnati-Hamilton area. As laid out in the State's maintenance demonstration, NO_X and VOC emissions in the Ohio portion of the area are projected to continue their downward trend throughout the maintenance period, driven primarily by mobile source measures. From 2014 to 2030, Ohio projected that 75 percent of the NO_X emission reductions and 96 percent of the VOC reductions in the Ohio portion of the area would be due to mobile source measures based on EPA-approved mobile source modeling. Even if no NO_X reductions are assumed from point sources within the Ohio portion of the Cincinnati-Hamilton area, NO_X emissions in 2030 are projected to be 30 percent less than in attainment year 2014.

Given the particular facts and circumstances associated with the Cincinnati-Hamilton area, EPA does not believe that the D.C. Circuit's invalidation of Ohio's CSAPR Phase 2 NO_X ozone season budget, which replaced CAIR's NO_X ozone season budget, is a bar to EPA's redesignation of the Ohio portion of the Cincinnati-Hamilton area for the 2008 ozone NAAQS.

b. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76 and 28 percent, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. In addition, EPA estimates that beginning in 2007, a reduction of 30,000 tons per year of NO_X will result from the benefits of sulfur control on heavy-duty gasoline vehicles. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduces both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. While these reductions did not aid the area in attaining the standard, emission reductions will occur during the maintenance period.

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[6] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-highway heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Cincinnati-Hamilton area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO_2 limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these nonroad diesel engines by approximately 90 percent. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_X emissions. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines. On March 3, 2010 (75 FR 9648), EPA issued a rule to reduce hazardous air pollutants from existing diesel powered stationary reciprocating internal combustion engines, also known as compression ignition engines. Amendments to this rule were finalized on January 14, 2013 (78 FR 6674). EPA estimated that when this rule is fully implemented in 2013, NO_X and VOC emissions from these engines will be reduced by approximately 9,600 and 36,000 tons per year, respectively.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, and are expected to result in a 15 to 25 percent reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_X from these engines. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

c. Control Measures Specific to the Cincinnati-Hamilton Area

Changes at several EGUs have resulted in reductions in NO_X emissions. Tanner's Creek Generating Station in Dearborn County, Indiana permanently shut down in May 2015. Prior to the shutdown, NO_X emissions had dropped from 15.08 tons per summer day (TPSD) in 2011 to 10.6 TPSD in 2014. The Walter C. Beckjord facility in Clermont County, Ohio permanently shut down in October of 2014. Prior to the shutdown, NO_X emissions from EGUs in Clermont County dropped from 43.41 TPSD in 2011 to 41.17 TPSD in 2014, partly attributable to the Walter C. Beckjord facility. Finally, Unit 3 (163 megawatts) of the Miami Fort facility in Hamilton County, Ohio permanently shut down in June of 2015. Prior to shutdown, NO_X emissions from EGUs in Hamilton County dropped from 17.72 TPSD in 2011 to 17.46 TPSD in 2014, partly attributable to reductions at unit 3 at Miami Fort.

2. Emission Reductions

Ohio is using a 2011 inventory as the nonattainment base year. Area, nonroad mobile, airport related emissions (AIR), and point source emissions (EGUs and non-EGUs) were collected from the Ozone NAAQS Implementation Modeling platform (2011v6.1). For 2011, this represents actual data reported to EPA by the states for the 2011 National Emissions inventory (NEI). Because emissions from state inventory databases, the NEI, and the Ozone NAAQS Emissions Modeling platform are annual totals, tons per summer day were derived according to EPA's guidance document "Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles" dated April 29 2002, using the temporal allocation references accompanying the 2011v6.1 modeling inventory files. Onroad mobile source emissions were developed in conjunction with the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and were calculated from emission factors produced by EPA's 2014 Motor Vehicle Emission Simulator (MOVES) model and data extracted from the region's travel-demand model.

For the attainment inventory, Ohio is using 2014, one of the years the Cincinnati-Hamilton area monitored attainment of the 2008 ozone standard. Because the 2014 NEI inventory was not available at the time Ohio EPA was compiling the redesignation request, the state was unable to use the 2014 NEI inventory directly. For area, nonroad mobile, and AIR, 2014 emissions were derived by interpolating between 2011 and 2018 Ozone NAAQS Emissions Modeling platform inventories. The point source sector for the 2014 inventory was developed using actual 2014 point source emissions reported to the state databases, which serve as the basis for the point source emissions reported to EPA for the NEI. Summer day inventories were derived for these sectors using the methodology described above. Finally, onroad mobile source emissions were developed in conjunction with OKI using the same methodology described above for the 2011 inventory.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2011 to 2014 for the Cincinnati-Hamilton area. Emissions data are shown in Tables 2 through 7.

Table 2—Cincinnati-Hamilton Area NO_X Emissions for Nonattainment Year 2011 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	10.67	0.02	4.27	4.78	12.24	31.98
Clermont	43.55	0.00	2.27	1.14	7.52	54.48
Clinton	0.00	0.00	1.15	0.52	4.53	6.20
Hamilton	26.29	0.02	8.56	10.09	33.69	78.65
Warren	1.55	0.00	3.24	1.66	9.84	16.29
Indiana:						
Dearborn	17.79	0.00	0.53	0.47	1.03	19.82
Kentucky:						
Boone	7.19	2.03	1.06	0.43	6.90	17.61
Campbell	0.17	0.00	0.38	0.49	4.30	5.34
Kenton	0.01	0.00	0.77	1.02	6.53	8.33
Ohio Totals	82.06	0.04	19.49	18.19	67.82	187.60
Area Totals	107.22	2.07	22.23	20.60	86.58	238.70

Table 3—Cincinnati-Hamilton Area VOC Emissions for Nonattainment Year 2011 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	3.09	0.03	2.93	9.59	10.21	25.85
Clermont	0.49	0.01	1.95	5.41	6.27	14.13
Clinton	0.00	0.01	0.84	2.49	2.27	5.61
Hamilton	2.62	0.04	7.44	21.88	28.09	60.07
Warren	0.62	0.01	2.12	5.71	8.21	16.67
Indiana:						
Dearborn	4.28	0.00	0.42	1.75	0.86	7.31
Kentucky:						
Boone	1.73	0.42	1.49	2.66	3.30	9.60
Campbell	0.22	0.00	0.40	1.29	2.05	3.96
Kenton	0.51	0.00	0.62	2.51	3.12	6.76
Ohio Totals	6.82	0.10	15.28	45.08	55.05	122.33
Area Totals	13.56	0.52	18.21	53.29	64.38	149.96

Table 4—Cincinnati-Hamilton Area NO_X Emissions for Attainment Year 2014 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	12.70	0.02	3.39	4.78	8.85	29.74
Clermont	41.20	0.00	1.81	1.14	5.44	49.59
Clinton	0.00	0.00	0.96	0.52	3.51	4.99
Hamilton	21.65	0.02	6.76	10.08	24.37	62.88
Warren	0.96	0.00	2.55	1.66	7.12	12.29
Indiana:						
Dearborn	11.74	0.00	0.44	0.47	0.74	13.39
Kentucky:						
Boone	7.37	2.07	0.88	0.43	5.46	16.21
Campbell	0.17	0.00	0.32	0.49	3.41	4.39
Kenton	0.01	0.00	0.64	1.02	5.17	6.84
Ohio Totals	76.51	0.04	15.47	18.18	49.29	159.49
Area Totals	95.80	2.11	17.75	20.59	64.07	200.32

TABLE 5—CINCINNATI-HAMILTON AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2014 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	2.96	0.03	2.61	9.51	7.59	22.70
Clermont	0.63	0.01	1.73	5.36	4.66	12.39
Clinton	0.01	0.01	0.71	2.51	1.53	4.77
Hamilton	2.73	0.04	6.54	21.66	20.88	51.85
Warren	0.51	0.01	1.93	5.66	6.10	14.21
Indiana:						
Dearborn	5.54	0.00	0.36	1.75	0.64	8.29
Kentucky:						
Boone	1.73	0.42	1.30	2.56	2.53	8.54
Campbell	0.22	0.00	0.34	1.26	1.58	3.40
Kenton	0.51	0.00	0.55	2.43	2.39	5.88
Ohio Totals	6.84	0.10	13.52	44.70	40.76	105.92
Area Totals	14.84	0.52	16.07	52.70	47.90	132.03

TABLE 6—CHANGE IN NO$_X$ AND VOC EMISSIONS BETWEEN 2011 AND 2014 FOR THE OHIO PORTION OF THE CINCINNATI-HAMILTON AREA (TPSD)

	NO$_X$			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	82.06	76.51	−5.55	6.82	6.84	0.02
AIR	0.04	0.04	0.00	0.10	0.10	0.00
Nonroad	19.49	15.47	−4.02	15.28	13.52	−1.76
Area	18.19	18.18	−0.01	45.08	44.70	−0.38
Onroad	67.82	49.29	−18.53	55.05	40.76	−14.29
Total	187.60	159.49	−28.11	122.33	105.92	−16.41

TABLE 7—CHANGE IN NO$_X$ AND VOC EMISSIONS BETWEEN 2011 AND 2014 FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPSD)

	NO$_X$			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	107.22	95.80	−11.42	13.56	14.84	1.28
AIR	2.07	2.11	0.04	0.52	0.52	0.00
Nonroad	22.23	17.75	−4.48	18.21	16.07	−2.14
Area	20.60	20.59	−0.01	53.29	52.70	−0.59
Onroad	86.58	64.07	−22.51	64.38	47.90	−16.48
Total	238.70	200.32	−38.38	149.96	132.03	−17.93

Table 7 shows that the Cincinnati-Hamilton area reduced NO$_X$ and VOC emissions by 38.38 TPSD and 17.93 TPSD, respectively, between 2011 and 2014. As shown in Table 6, the Ohio portion of the Cincinnati-Hamilton area alone reduced NO$_X$ and VOC emissions by 28.11 TPSD and 16.41 TPSD, respectively, between 2011 and 2014.

3. Meteorology

To further support Ohio EPA's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not on favorable meteorology, an analysis was performed by the Lake Michigan Air Directors Consortium (LADCO). A classification and regression tree (CART) analysis was conducted with 2000 through 2014 data from three Cincinnati-Hamilton area ozone sites. The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions.

Regression trees were developed for the three monitors to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or other non-meteorological influences. The CART analysis showed the resulting trends in ozone concentrations declining over the period examined, supporting the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

D. Does Ohio have a fully approvable ozone maintenance plan for the Cincinnati-Hamilton area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment for the 2008 ozone standard, Ohio EPA submitted a SIP revision to provide for maintenance of the 2008 ozone standard through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As is discussed more fully below, EPA proposes to find that Ohio's ozone maintenance plan includes the necessary components and is proposing to approve the maintenance plan as a revision of the Ohio SIP.

1. Attainment Inventory

EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 2008 8-hour ozone NAAQS based on monitoring data for the period of 2013–2015. Ohio EPA selected 2014 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Cincinnati-Hamilton area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Cincinnati-Hamilton area?

Ohio has demonstrated maintenance of the 2008 ozone standard through 2030 by assuring that current and future emissions of VOC and NO_X for the Cincinnati-Hamilton area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2020 and 2030 to demonstrate maintenance. 2030 is more than 10 years after the expected effective date of the redesignation to attainment and 2020 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

To develop the 2020 and 2030 inventories, the state collected data from the Ozone NAAQS Emissions Modeling platform (2011v6.1) inventories for years 2011, 2018 and 2025. 2020 emissions for area, nonroad mobile, AIR, and point source sectors were derived by interpolating between 2018 and 2025. 2030 emissions for area, nonroad mobile, AIR, and point source sectors were derived using the TREND function in Excel. If the trend function resulted in a negative value the emissions were assumed not to change. Summer day inventories were derived for these sectors using the methodology described in section IV.C.2. above. Finally, onroad mobile source emissions were developed in conjunction with OKI using the same methodology described in section IV.C.2. above for the 2011 inventory. Emissions data are shown in Tables 8 through 13 below.

TABLE 8—CINCINNATI-HAMILTON AREA NO_X EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	9.77	0.02	2.03	4.78	4.74	21.34
Clermont	31.32	0.00	1.11	1.14	2.91	36.48
Clinton	0.00	0.00	0.64	0.52	1.86	3.02
Hamilton	18.73	0.02	4.06	10.08	13.05	45.94
Warren	1.54	0.00	1.50	1.66	3.81	8.51
Indiana:						
Dearborn	2.96	0.00	0.30	0.48	0.40	4.14
Kentucky:						
Boone	7.86	2.29	0.60	0.43	2.41	13.59
Campbell	0.17	0.00	0.23	0.49	1.50	2.39
Kenton	0.01	0.00	0.43	1.02	2.28	3.74
Ohio Totals	61.36	0.04	9.34	18.18	26.37	115.29
Area Totals	72.36	2.33	10.90	20.60	32.96	139.15

TABLE 9—CINCINNATI-HAMILTON AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	2.98	0.03	2.23	9.38	4.79	19.41

TABLE 9—CINCINNATI-HAMILTON AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)—Continued

County	Point	AIR	Nonroad	Area	Onroad	Total
Clermont	0.51	0.01	1.43	5.28	2.94	10.17
Clinton	0.00	0.01	0.51	2.54	0.93	3.99
Hamilton	2.54	0.04	5.42	21.30	13.18	42.48
Warren	0.60	0.01	1.54	5.59	3.85	11.59
Indiana:						
Dearborn	4.06	0.00	0.29	1.77	0.40	6.52
Kentucky:						
Boone	1.73	0.45	1.03	2.41	1.38	7.00
Campbell	0.22	0.00	0.25	1.22	0.86	2.55
Kenton	0.49	0.00	0.47	2.31	1.30	4.57
Ohio Totals	6.63	0.10	11.13	44.09	25.69	87.64
Area Totals	13.13	0.55	13.17	51.80	29.63	108.28

TABLE 10—CINCINNATI-HAMILTON AREA NO_X EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	9.83	0.00	1.16	4.79	2.44	18.22
Clermont	31.32	0.00	0.63	1.15	1.50	34.60
Clinton	0.00	0.00	0.29	0.53	1.28	2.10
Hamilton	18.75	0.00	2.59	10.10	6.71	38.15
Warren	1.54	0.00	0.78	1.67	1.96	5.95
Indiana:						
Dearborn	2.96	0.00	0.18	0.48	0.21	3.83
Kentucky:						
Boone	8.51	0.29	0.38	0.44	1.05	10.67
Campbell	0.17	0.00	0.15	0.49	0.65	1.46
Kenton	0.01	0.00	0.27	1.02	0.99	2.29
Ohio Totals	61.44	0.00	5.45	18.24	13.89	99.02
Area Totals	73.09	0.29	6.43	20.67	16.79	117.27

TABLE 11—CINCINNATI-HAMILTON AREA VOC EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Nonroad	Area	Onroad	Total
Ohio:						
Butler	3.00	0.01	2.43	9.31	2.88	17.63
Clermont	0.64	0.00	1.46	5.20	1.77	9.07
Clinton	0.01	0.00	0.42	2.61	0.71	3.75
Hamilton	2.62	0.00	5.87	21.01	7.92	37.42
Warren	0.58	0.00	1.51	5.52	2.32	9.93
Indiana:						
Dearborn	4.06	0.00	0.27	1.85	0.24	6.42
Kentucky:						
Boone	1.73	0.06	0.92	2.36	0.77	5.84
Campbell	0.21	0.00	0.22	1.19	0.48	2.10
Kenton	0.47	0.00	0.50	2.25	0.73	3.95
Ohio Totals	6.85	0.01	11.69	43.65	15.60	77.80
Area Totals	13.32	0.07	13.60	51.30	17.82	96.11

TABLE 12—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2030 FOR THE OHIO PORTION OF THE CINCINNATI-HAMILTON AREA (TPSD)

	NO_X				VOC			
	2014	2020	2030	Net Change (2014–2030)	2014	2020	2030	Net Change (2014–2030)
Point	76.51	61.36	61.44	−15.07	6.84	6.63	6.85	0.01
AIR	0.04	0.04	0.00	−0.04	0.10	0.10	0.01	−0.09
Nonroad	15.47	9.34	5.45	−10.02	13.52	11.13	11.69	−1.83
Area	18.18	18.18	18.24	0.06	44.70	44.09	43.65	−1.05

TABLE 12—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2030 FOR THE OHIO PORTION OF THE CINCINNATI-HAMILTON AREA (TPSD)—Continued

	NO_X				VOC			
	2014	2020	2030	Net Change (2014–2030)	2014	2020	2030	Net Change (2014–2030)
Onroad	49.29	26.37	13.89	−35.40	40.76	25.69	15.60	−25.16
Total	159.49	115.29	99.02	−60.47	105.92	87.64	77.80	−28.12

TABLE 13—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2030 FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPSD)

	NO_X				VOC			
	2014	2020	2030	Net Change (2014–2030)	2014	2020	2030	Net Change (2014–2030)
Point	95.80	72.36	73.09	−22.71	14.84	13.13	13.32	−1.52
AIR	2.11	2.33	0.29	−1.82	0.52	0.55	0.07	−0.45
Nonroad	17.75	10.90	6.43	−11.32	16.07	13.17	13.60	−2.47
Area	20.59	20.60	20.67	0.08	52.70	51.80	51.30	−1.40
Onroad	64.07	32.96	16.79	−47.28	47.90	29.63	17.82	−30.08
Total	200.32	139.15	117.27	−83.05	132.03	108.28	96.11	−35.92

In summary, the maintenance demonstration for the Cincinnati-Hamilton area shows maintenance of the 2008 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2014 emission levels when taking into account both future source growth and implementation of future controls. Table 13 shows NO_X and VOC emissions in the Cincinnati-Hamilton area are projected to decrease by 83.05 TPSD and 35.92 TPSD, respectively, between 2014 and 2030. As shown in Table 12, NO_X and VOC emissions in the Ohio portion of the Cincinnati-Hamilton area alone are projected to decrease by 60.47 TPSD and 28.12 TPSD, respectively, between 2014 and 2030.

3. Continued Air Quality Monitoring

Ohio EPA has committed to continue to operate the ozone monitors listed in Table 1 above. Ohio EPA has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Ohio remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Ohio, has the legal authority to enforce and implement the requirements of the maintenance plan for the Ohio portion of the Cincinnati-Hamilton area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Ohio EPA will continue to operate the current ozone monitors located in the Ohio portion of the Cincinnati-Hamilton area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, Ohio EPA will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Ohio was compiled for 2014. Point source facilities covered by Ohio's emission statement rule, Ohio Administrative Code Chapter 3745–24, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Cincinnati-Hamilton area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Cincinnati-Hamilton area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.079 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The studies will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The studies will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Ohio's plan, an action level response is triggered when a two-year average fourth high value of 0.076 ppm or greater is monitored within the maintenance area. A violation of the standard within the maintenance area also triggers an action level response. When an action level response is triggered, Ohio EPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

1. Implementation of an enhanced I/M program (E-Check) in Butler, Clermont, Hamilton and Warren Counties.
2. Tighten or adopt VOC RACT on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.
3. Apply VOC RACT to smaller existing sources.
4. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:
    a. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;
    b. traffic flow and transit improvements; and
    c. other new or innovative transportation measures not yet in widespread use that affected local governments deem appropriate.
5. Alternative fuel and diesel retrofit programs for fleet vehicle operations.
6. Require VOC or NO_X emission offsets for new and modified major sources.
7. Increase the ratio of emission offsets required for new sources.
8. Require VOC or NO_X controls on new minor sources (less than 100 tons).
9. Adopt NO_X RACT for existing combustion sources.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Ohio EPA has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Ohio portion of the Cincinnati-Hamilton area to cover an additional ten years beyond the initial 10 year maintenance period. Thus, EPA proposes to find that the maintenance plan SIP revision submitted by Ohio EPA for the Ohio portion of the Cincinnati-Hamilton area meets the requirements of section 175A of the CAA.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cincinnati-Hamilton area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March

2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Ohio's maintenance plan includes NO_X and VOC MVEBs for the Cincinnati-Hamilton area for 2030 and 2020, the last year of the maintenance period and an interim year. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Ohio's April 21, 2016, maintenance plan SIP submission, including the VOC and NO_X MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area was open for public comment on EPA's adequacy Web site on July 22, 2016, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 and 2030 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area closed on August 22, 2016. No comments on the submittal were received during the adequacy comment period. The submitted maintenance plan, which included the MVEBs, was endorsed by the Governor (or his or her designee) and was subject to a state public hearing. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 8-hour ozone standard.

TABLE 14—MVEBS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA, TPSD

	Attainment year 2014 onroad emissions	2020 Estimated onroad emissions	2020 Mobile safety margin allocation	2020 MVEBs	2030 Estimated onroad emissions	2030 Mobile safety margin allocation	2030 MVEBs
VOC	41.40	26.09	3.91	30.00	15.84	2.38	18.22
NO_X	50.03	26.77	4.02	30.79	14.10	2.12	16.22

As shown in Table 14, the 2020 and 2030 MVEBs exceed the estimated 2020 and 2030 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Ohio EPA allocated a portion of the safety margin (described further below) to the mobile sector. Ohio has demonstrated that the Cincinnati-Hamilton area can maintain the 2008 ozone NAAQS with mobile source emissions in the Ohio and Indiana portion of the area of 30.00 TPSD and 18.22 TPSD of VOC and 26.77 TPSD and 16.22 TPSD of NO_X in 2020 and 2030, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Ohio and Indiana portion of the Cincinnati-Hamilton area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 12, the emissions in the Ohio portion of the Cincinnati-Hamilton area are projected to have safety margins of 60.47 TPSD for NO_X and 28.12 TPSD for VOC in 2030 (the difference between the attainment year, 2014, emissions and the projected 2030 emissions for all sources in the Ohio portion of the Cincinnati-Hamilton area). Similarly, there is a safety margin of 44.20 TPSD for NO_X and 18.28 TPSD for VOC in 2020. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 14 above, Ohio is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2020, Ohio is allocating 3.91 TPSD and 4.02 TPSD of the VOC and NO_X safety margins, respectively. In 2030, Ohio is allocating 2.38 TPSD and 2.12 TPSD of the VOC and NO_X safety margins, respectively. Ohio EPA is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2020 and 2030 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2020 and 2030 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Proposed Actions

EPA is proposing to determine that the Cincinnati-Hamilton nonattainment is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Ohio portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio EPA's request to change the legal designation of the Ohio portion of the Cincinnati-Hamilton area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Cincinnati-Hamilton area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati-Hamilton area.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: September 19, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–23301 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R05–OAR–2016–0277; FRL–9953–09–Region 5]

Reclassification of the Sheboygan, Wisconsin Area To Moderate Nonattainment for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Sheboygan, Wisconsin area (Sheboygan County) has failed to attain the 2008 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2016, and that this area is not eligible for an extension of the attainment date. EPA is proposing to reclassify this area as "moderate" nonattainment for the 2008 ozone NAAQS. Once reclassified as moderate, the State of Wisconsin must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to areas classified as moderate nonattainment for the 2008 ozone NAAQS. EPA is proposing to require submission of the necessary moderate area SIP revisions as expeditiously as practicable, but no later than January 1, 2017.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0277 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
II. How does EPA determine whether an area has attained the 2008 ozone standard?
III. What is EPA proposing and what is the rationale?
IV. Summary of Proposed Actions
V. Statutory and Executive Order Reviews

I. Background

On April 30, 2012, the Sheboygan area was designated as nonattainment for the 2008 ozone NAAQS and was classified as marginal, effective July 20, 2012 (77 FR 30088, May 21, 2012). On March 6, 2015 (80 FR 12264), in the implementation rule for the 2008 ozone

NAAQS, EPA established an attainment deadline of July 20, 2015, for marginal areas.

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on an area's ozone design value[1] as of the area's attainment deadline, whether the area has attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a one-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next "highest" classification (*e.g.,* marginal to moderate, moderate to serious, *etc.*) or to the classifications applicable to the areas' design values.

On May 4, 2016 (81 FR 26697), based on EPA's evaluation and determination that the area met the attainment date extension criteria of CAA section 181(8)(5), EPA granted the Sheboygan area a one-year extension of the marginal area attainment date to July 20, 2016.

II. How does EPA determine whether an area has attained the 2008 ozone standard?

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the three-year average of the annual fourth-highest daily maximum eight-hour average ambient air quality ozone concentration is less than or equal to 0.075 parts per million (ppm). This three-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. The rounding convention under 40 CFR part 50, appendix P, dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed three-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and, therefore, over the standard.

EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database (formerly known as the Aerometric Information Retrieval System). Ambient air quality monitoring data for the three-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of required monitoring days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined according to appendix P of part 50.

III. What is EPA proposing and what is the rationale?

A. Determination of Failure To Attain and Reclassification

EPA is issuing this proposal pursuant to the agency's statutory obligation under CAA section 181(b)(2) to determine whether the Sheboygan nonattainment area has attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. In this action, EPA is proposing to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. This area is not eligible for an additional one-year attainment date extension because, at 0.076 ppm, the average of the 2014 and 2015 annual fourth highest daily maximum eight-hour average ozone concentrations for the monitor in the area is greater than 0.075 ppm. (2014 and 2015 are the last two full years of complete air quality data prior to the July 20, 2016, attainment date.) Table 2 shows the relevant monitoring data for the Sheboygan area.

TABLE 2

Area	County	Monitor	2013 4th high	2014 4th high	2015 4th high	2013–2015 Average
Sheboygan, WI	Sheboygan	Kohler Andre Park 551170006.	0.078	0.072	0.081	0.077

CAA section 181(b)(2)(A) provides that a marginal nonattainment area shall be reclassified by operation of law upon a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. Based on quality-assured ozone monitoring data from 2013–2015, as shown in Table 2, the new classification applicable to the Sheboygan area would be the next higher classification of "moderate" under the CAA statutory scheme.[2]

Moderate nonattainment areas are required to attain the standard "as expeditiously as practicable" but no later than six years after the initial designation as nonattainment (which, in the case of the Sheboygan area, is July 20, 2018). The attainment deadlines associated with each classification are prescribed by the CAA and codified at 40 CFR 51.1103.

B. Moderate Area SIP Revision Submission Deadline

Wisconsin will be required to submit a revised SIP that addresses the CAA's moderate nonattainment area requirements, as interpreted and described in the final ozone NAAQS. See 40 CFR 51.1100 *et seq.* Those requirements include: (1) An attainment demonstration (CAA section 182(b) and 40 CFR 51.1108); (2) provisions for volatile organic compounds (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) (CAA section 182(b)(2) and 40 CFR 51.1112(a)–(b)) and reasonably available control measures (RACM) (CAA section 172(c)(1) and 40 CFR 51.1112(c)); (3) reasonable further progress (RFP) reductions in VOC and/or NOx emissions in the area (CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110); (4) contingency measures to be implemented in the event of failure to meet a milestone or to attain the standard (CAA section 172(c)(9)); (5) a vehicle inspection and maintenance program, if applicable (CAA section 181(b)(4) and 40 CFR 51.350); and, (6) NO_X and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165(a)). See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).

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[1] An area's ozone design value for the eight-hour ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most recent three years with complete, quality-assured monitored ozone data prior to the attainment deadline.

[2] The 2013–2015 design value the Sheboygan area does not exceed 0.100 ppm, which is the threshold for reclassifying an area to serious per CAA section 181(b)(2)(A)(ii) and 40 CFR 51.1103.

When an area is reclassified under CAA section 181(b)(2), CAA section 182(i) requires the state to meet the new requirements according to the schedules prescribed in those requirements. It provides, however, "that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." CAA section 182(b), as interpreted by 40 CFR 51.1100 *et seq.*, describes the required SIP revisions and associated deadlines for a nonattainment area classified as moderate at the time of the initial designations. However, these SIP submission deadlines (*e.g.*, three years after the effective date of designation for submission of an attainment plan and attainment demonstration) have already passed. Accordingly, EPA is proposing to exercise its discretion under CAA section 182(i) to adjust the SIP submittal deadlines for the Sheboygan area.

In determining an appropriate deadline for the moderate area SIP revisions for the Sheboygan area, EPA notes that, pursuant to 40 CFR 51.1108(d), the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date. In the case of nonattainment areas classified as moderate for the 2008 ozone NAAQS, the attainment year ozone season is the 2017 ozone season (40 CFR 51.1100(h)).

Further, in the implementation rule for the 2008 ozone NAAQS, EPA established the requirement for areas to implement RACT measures as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of a nonattainment designation. (81 FR 12280) For the nonattainment designations that were effective July 20, 2012, this would require RACT measures (for areas where they are required) to be implemented by January 1, 2017. This implementation deadline ensured that RACT measures would be required to be in place no later than the last ozone season prior to the moderate area attainment date of July 20, 2018.

The January 1, 2017, SIP submission deadline is consistent with the SIP submission deadline established for all other Marginal nonattainment areas in the country that were recently reclassified to Moderate for the 2008 ozone NAAQS,[3] and is consistent with the timeframes in the CAA as codified in the EPA's implementing regulations. Accordingly, EPA is proposing to require Wisconsin to submit the required SIP revisions no later than January 1, 2017.

IV. Summary of Proposed Actions

EPA is proposing to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016, is not eligible for an additional one-year attainment date extension, and must be reclassified as moderate. EPA is also proposing to require Wisconsin to submit SIP revisions to address moderate area requirements as expeditiously as practicable, but no later than January 1, 2017.

V. Statutory and Executive Order Reviews

Under section 181(b)(2) of the CAA, a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification must occur by operation of law. A determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law under section 181(b)(2) does not in and of itself create any new requirements, but rather applies the requirements contained in the CAA. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–23294 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

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[3] *See* 81 FR 26697 (May 4, 2016).

Notices

Federal Register
Vol. 81, No. 188
Wednesday, September 28, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

September 22, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by October 28, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: AMS Grant Programs.

OMB Control Number: 0581–0240.

Summary of Collection: The Agricultural Marketing Service (AMS) recently consolidated its grant programs into one Grants Division. Due to this organization merger, AMS is merging its other three grant collections, 0581–0235 "Farmers' Market Promotion Program," (FMPP); 0581–0248 "Specialty Crop Block Grant Program (SCBGP)—Farm Bill," 0581–0287 "Local Food Promotion Program," (LFPP); and a new program "Specialty Crop Multi-state Program," into the renewal of 0581–0240 "The Federal-State Marketing Improvement Program." (FSMIP) This revised collection will be retitled 0581–0240 "AMS Grant Programs." All the grant programs are authorized pursuant to the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621, *et. seq.*) and the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001) are implemented through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR 200).

Need and Use of the Information: The grants authorized by the FMPP are targeted to help improve and expand domestic farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities. Grants authorized under LFPP support the development and expansion of local and regional food business enterprises to increase domestic consumption of, and access to locally and regionally produced agricultural products, and to develop new market opportunities for farm and ranch operations serving local markets. The SCBGP works to increase the competitiveness of specialty crops. The SCMP competitively award funds to State departments of agriculture to solely enhance the competitiveness of specialty crops by funding collaborative, multi-state projects that address regional or national level specialty crop issues. FSMIP provides matching funds on a competitive basis to assist eligible entities in exploring new market opportunities and to encourage research and innovation aimed at improving the efficiency and performance of the marketing system. The information collection requirements in this request are needed to implement the grant programs. The information will be used by AMS to establish the entity's eligibility for participation, the suitability of the budget for the proposed project, and compliance with applicable Federal regulations.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 1,866.

Frequency of Responses: Reporting: Annually; Semi-annually.

Total Burden Hours: 51,820.

Agricultural Marketing Service

Title: Specialty Crops Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

This renewal submission reflects a name change to the Program. A notice to trade was posted September 16, 2015, indicating the Program name be changed from Fruit and Vegetable Program to Specialty Crops Program.

Need and Use of the Information: AMS will collect market information on some 411 specialty crops for prices and supply. The production of Market News reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and collected in person through face-to-face interviews and by confidential telephone throughout the country by market reporters. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production, marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 4,359.

Frequency of Responses: Reporting: Daily; Weekly; Monthly.

Total Burden Hours: 84,155.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581–0031.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a–499t) and 7 CFR part 46, establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors by prohibiting unfair practices. PACA requires nearly all persons who operate as commission merchants, dealers and brokers buying or selling fruit and or vegetables in interstate or foreign commerce to be licensed. The license for retailers and grocery wholesalers is effective for three years and for all other licensees up to three years, unless withdrawn.

Need and Use of the Information: Using various forms and business records, AMS will collect information from the applicant to administer licensing provisions under the Act, to adjudicate contract disputes, and for the purpose of enforcing the PACA and its regulations. If this information were unavailable, it would be impossible to identify and regulate the individuals or firms that are restricted due to sanctions imposed because of the reparation or administrative actions.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 13,543.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 87,406.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–23319 Filed 9–27–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board (Board) will meet in Golden Pond, Kentucky. The Board is authorized under Section 450 of the Land Between The Lakes Protection Act of 1998 (Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the Board is to advise the Secretary of Agriculture on the means of promoting public participation for the land and resource management plan for the recreation area; and environmental education. Board information can be found at the following Web site: *http://www.landbetweenthelakes.us/.*

DATES: The meeting will be held at 9:00 a.m. on October 25, 2016.

All Board meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Land Between The Lakes Administration Building, 100 Van Morgan Drive, Golden Pond, Kentucky.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Land Between The Lakes Adminstrative Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Christine Bombard, Board Coordinator, by phone at 270–924–2002 or via email at *cabombard@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss Environmental Education; and
2. Effectively communicate future land management plan activities.

The meeting is open to the public. Board discussion is limited to Forest Service staff and Board members. Written comments are invited and should be sent to Tina Tilley, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211; and must be received by October 11, 2016, in order for copies to be provided to the members for this meeting. Board members will review written comments received, and at their request, oral clarification may be requested for a future meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: September 21, 2016.

Tina R. Tilley,

Area Supervisor, Land Between The Lakes.

[FR Doc. 2016–23376 Filed 9–27–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Region Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Region Recreation Resource Advisory Committee (Recreation RAC) will meet in Cleveland, Ohio. The Recreation RAC is authorized pursuant with the Federal Lands Recreation Enhancement Act (the Act) (Pub. L. 108–447) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). Additional information concerning the Recreation RAC may be found by visiting the Recreation RAC's Web site at: *http://www.fs.usda.gov/main/r9/recreation/racs.*

DATES: The meeting will be held on Friday, October 14, 2016, from 8:30 a.m. to 4:00 p.m.

All Recreation RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under the **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Hilton Garden Inn Cleveland Airport, 4900 Emerald Court SW., Cleveland, Ohio. The meeting will also be available via teleconference. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Eastern Region, Regional Office located at 626 E. Wisconsin Avenue, Milwaukee, Wisconsin. Please call 541–860–8048 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Joanna Wilson, Eastern Region Recreation RAC Coordinator by phone at 541–860–8048, or by email at *jwilson08@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide orientation to the new Recreation RAC members,
2. Elect a Chairperson, and
3. Review the Monongahela National Forest fee proposals which include the Blue Bend Campground, Island Campground, and the Cranberry Dump Station.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 23, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Recreation RAC may file written statements with the Committee's staff before or after the meeting. Written comments and time requests for time to make oral comments must be sent to Joanna Wilson, Eastern Region Recreation RAC Coordinator, 855 South Skylake Drive, Woodland Hills, Utah 84653; or by email to *jwilson08@fs.fed.us.*

Meeting Accommodations: If you require reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by case basis.

Dated: September 8, 2016.

Mary Beth Borst,

Deputy Regional Forester.

[FR Doc. 2016–23422 Filed 9–27–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (LTBFAC) will meet in South Lake Tahoe, California. The Committee is established pursuant to Executive Order 13057, and the Federal Advisory Committee Act of 1972. Additional information concerning the Committee can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/ltbmu/LTFAC.*

DATES: The meeting will be held on Thursday, October 27, 2016, from 1:00 p.m. to 3:00 p.m.

All LTBFAC meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Tahoe City Public Utility District, 221 Fairway Drive, Tahoe City, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, 35 College Drive, South Lake Tahoe, California. Please call ahead at 530–543–2774 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karen Kuentz, Lake Tahoe Basin Management Unit, USDA Forest Service, 35 College Drive, South Lake Tahoe, California 96150 by phone at 530–543–2774, or by email at *kkuentz@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to:

1. Provide an update on the South Nevada Public Land Management Act (SNPLMA) secondary list and priority setting,
2. Provide a follow-up and debrief on the 20th Anniversary Lake Tahoe Summit, and
3. Provide an update on Forest Service Actions: Tree Mortality and Invasive Species.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by October 20, 2016, to be scheduled on the agenda. However, anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Karen Kuentz, USDA Forest Service, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California 96150; by email at *kkuentz@fs.fed.us,* or via facsimile to 530–543–2693.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: September 15, 2016.

Jeff Marsolais,

Forest Supervisor.

[FR Doc. 2016–23431 Filed 9–27–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Wednesday, October 5, 2016. During this time, members will discuss and finalize the Council's various initiatives focused on innovation, entrepreneurship, and talent development and will formally conclude this Council's term.

DATES: Wednesday, October 5, 2016: 1:00 p.m.–4:00 p.m. Eastern Time (ET).

Pre-clearance is required to attend the meeting in person. Pre-registration is required to comment during the public comment portion of the meeting; each commenter will be limited to no more than five minutes. If you wish to attend the meeting in person or to comment, you must notify Julie Lenzer (see contact information below) no later than 11:59 p.m. ET on October 3, 2016.

ADDRESSES: Wednesday, October 5, 2016: U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

Those unable to attend the meeting in person but wishing to listen to the proceedings can do so through a conference call line: 888–913–8645, passcode: 4026802.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Ave. NW., Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001; facsimile: +1 202 273 4781. Please reference "NACIE October 5, 2016" in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this final meeting of the second term of NACIE is to finalize its initiatives in three focus areas—workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: September 22, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–23379 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

[Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, October 6, 2016, and on Friday, October 7, 2016. During the meeting, NACIE will cover the following agenda topics: administrative briefs, newly-elected NACIE co-chairs, member introductions, and a NACIE Design Thinking Workshop. The Thursday portion of the meeting will take place at the U.S. Department of Commerce at 1401 Constitution Ave. NW., Washington, DC 20230, and the Friday portion of the meeting will take place at the U.S. Office of Personnel Management Innovation Lab at 1900 E St. NW., Washington, DC 20415.

DATES:

Thursday, October 6, 2016: 2:00 p.m.–3:40 p.m.; 4:30 p.m.–5:45 p.m. Eastern Time (ET)

Friday, October 7, 2016: 8:30 a.m.–12:00 p.m. ET

Pre-clearance is required to attend the meeting in person. Pre-registration is required to comment during the public comment portion of the meeting; each commenter will be limited to no more than five minutes. If you wish to attend the meeting in person or to comment, you must notify Julie Lenzer (see contact information below) no later than 11:59 p.m. ET on October 3, 2016.

ADDRESSES:

Thursday, October 6, 2016: U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

Friday, October 7, 2016: U.S. Office of Personnel Management Innovation Lab, 1900 E St. NW., Washington, DC 20415.

Those unable to attend the meeting in person but wishing to listen to the proceedings can do so through a conference call line: 888–913–8645, passcode: 4026802

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this initial meeting of the third term of NACIE is to discuss its planned initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Ave. NW., Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001; facsimile: +1 202 273 4781. Please reference "NACIE October 6–7, 2016" in the subject line of your correspondence.

Dated: September 22, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–23380 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will meet on Wednesday, November 9, 2016 from 8:30 a.m. to 5:00 p.m. Mountain Time and Thursday, November 10, 2016, from 8:30 a.m. to 2:30 p.m. Mountain Time. The primary purpose of this meeting is to discuss the National Earthquake Hazards Reduction Program (NEHRP) activities and gather information for the Committee's 2017 Report on the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/*.

DATES: The ACEHR will meet on Wednesday, November 9, 2016, from 8:30 a.m. until 5:00 p.m. Mountain Time. The meeting will continue on Thursday, November 10, 2016, from 8:30 a.m. until 2:30 p.m. Mountain Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the Katharine Blodgett Gebbie Laboratory Conference Room 1A106, Building 81, at the National Institute of Standards and Technology (NIST), 325 Broadway Street, Boulder, Colorado 80305. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tina Faecke, Management and Program Analyst, National Earthquake Hazards Reduction Program, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Ms. Faecke's email address is *tina.faecke@nist.gov* and her phone number is (301) 975–5911.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- the effectiveness of NEHRP in performing its statutory activities;
- any need to revise NEHRP; and
- the management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/*.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will hold an open meeting on Wednesday, November 9, 2016 from 8:30 a.m. to 5:00 p.m. Mountain Time and Thursday, November 10, 2016, from 8:30 a.m. to 2:30 p.m. Mountain Time. The meeting will be held in the Katharine Blodgett Gebbie Laboratory Conference Room 1A106, Building 81, at NIST, 325 Broadway Street, Boulder, Colorado 80305. The primary purpose of this meeting is to discuss the NEHRP activities and gather information for the Committee's 2017 Report on the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On Thursday, November 10, approximately 15 minutes in the morning will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NEHRP Web site at *http://nehrp.gov/*. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Ms. Tina Faecke, *tina.faecke@nist.gov*, by 5:00 p.m. Eastern time, Wednesday, October 26, 2016.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–4032, or electronically by email to *tina.faecke@nist.gov*.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern Time, Wednesday, October 26, 2016, in order to attend. Please submit your full name, email address, and phone number to Tina Faecke. Non-U.S. citizens must submit additional information; please contact Ms. Faecke. Ms. Faecke's email address is *tina.faecke@nist.gov* and her phone number is (301) 975–5911. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Faecke at (301) 975–5711 or visit: *http://www.nist.gov/public_affairs/visitor/*.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2016–23337 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 26, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, Thursday, October 27, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Friday, October 28, 2016 from 9:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 26, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, Thursday, October 27, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, and

Friday, October 28, 2016 from 9:00 a.m. until 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the West Square, Administration Building, at the National Institute of Standards Technology (NIST), 100, Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Matthew Scholl, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2941, Email address: *mscholl@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 26, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, Thursday, October 27, 2016, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Friday, October 28, 2016 from 8:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Presentation on Modernizing Outdated and Vulnerable Equipment and Information Technology Act of 2016, S.3263, 114th Cong. or the MoveIT Act,
—Updates on OMB Circular A–130, Managing Information as a Strategic Resources,
—Updates on the President's Cybersecurity National Action Plan (CNAP),
—Presentation on the Cybersecurity Framework and the Government,
—Panel discussion on Information Sharing, Information Sharing and Analysis Organizations (ISAOs), and Continuous Diagnostics and Mitigation,
—Presentation on US Department of Homeland Security's Mobility Study,
—Panel discussion/presentation on National Telecommunications and Information Administration (NTIA) Internet of Things (IoT) report,
—Presentation/Discussion on Regulators Task Force,
—Updates on National Cyber Incident Response Planning, and
—Updates on NIST Computer Security Division.

Note that agenda items may change without notice. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. Pre-registration is required to attend this meeting.

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, email address and phone number to Isabel Van Wyk by 5:00 p.m. Eastern Time, Tuesday, October 25, 2016. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address by 5:00 p.m. Eastern Time, Tuesday, October 18, 2016. Isabel Van Wyk's email address is *isabel.vanwyk@nist.gov* and her telephone number is 301–975–8371.

Also, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Isabel Van Wyk at 301–975–8371 or visit: *http://www.nist.gov/public_affairs/visitor/.*

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, October 28, 2016, between 10:00 a.m. and 10:30 a.m.). Speakers will be selected on a first-come, first served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Matthew Scholl at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Kevin Kimball,
NIST Chief of Staff.

[FR Doc. 2016–23338 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE905

Taking and Importing of Marine Mammals and Dolphin-Safe Tuna Products

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; determination of regular and significant mortality and serious injury of dolphins.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued a determination, under the Dolphin Protection Consumer Information Act (DPCIA), of regular and significant mortality and serious injury of dolphins in gillnet fisheries harvesting tuna by vessels flagged under the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen. This determination triggers additional documentation requirements for tuna product from those fisheries that is exported from or offered for sale in the United States, including that such tuna must be accompanied by a written statement executed by an observer participating in a national or international program acceptable to the Assistant Administrator, in addition to such statement by the captain of the vessel, that certifies that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and certain other required information regarding dolphin interactions and segregation of tuna. These determinations were based on review of scientific information and, when available, documentary evidence submitted by the relevant government.

DATES: Effective November 28, 2016, except the new requirements for observer statements that will be effective upon announcement in the **Federal Register** of approval by the

Office of Management and Budget under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Nina M. Young, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Phone: 301–427–8383 Email: *Nina.Young@noaa.gov.* More information on this final action can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/ia/.*

SUPPLEMENTARY INFORMATION: The DPCIA, 16 U.S.C. 1385 *et seq.*, states that it is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "dolphin safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product does not meet the dolphin safe requirements set out in the statute and elaborated in the NMFS implementing regulations.

50 CFR 216.91 provides that tuna product prepared from tuna harvested by purse seine vessels of more than 400 short tons carrying capacity in the eastern tropical Pacific Ocean (ETP) and labeled "dolphin safe" is required to be accompanied by both a captain and an observer statement that the tuna meets the "dolphin safe" criteria under the DPCIA. Tuna product prepared from tuna harvested in other fisheries and labeled "dolphin safe" is required to be accompanied by a captain's statement that the tuna meets the "dolphin safe" criteria and may require an observer statement if additional requirements are triggered.

In addition, under 50 CFR 216.91, tuna product labeled "dolphin safe" that was prepared from tuna caught in a fishery "in which the Assistant Administrator has determined that either a regular and significant association between dolphins and tuna (similar to the association between dolphins and tuna in the ETP) or a regular and significant mortality or serious injury of dolphins is occurring" must be accompanied by "a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, unless the Assistant Administrator determines an observer statement is unnecessary." The captain and observer statements must certify that: No fishing gear was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught; no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and if non-dolphin-safe tuna was retained on the same fishing trip; and (C) tuna caught in sets designated as dolphin-safe was stored physically separate from tuna caught in a non-dolphin-safe set by the use of netting, other material, or separate storage areas from the time of capture through unloading.

50 CFR 216.91 provides that, for tuna product prepared from tuna harvested in other than the ETP large purse seine fishery and labeled "dolphin safe," U.S. processors and importers of record must collect and retain for 2 years information on each point in the chain of custody regarding the shipment of the tuna or tuna product to the point of entry into U.S. commerce. The retained information must be provided to NMFS upon request and must be sufficient for NMFS to conduct a trace back to verify that the tuna product certified as dolphin-safe to NMFS, in fact, meets the dolphin-safe requirements for such certification.

In addition, under 50 CFR 216.91, tuna product prepared from tuna harvested in fisheries in which the Assistant Administrator has determined that a "regular and significant" mortality or serious injury of dolphins or a "regular and significant" tuna-dolphin association is occurring and labeled dolphin-safe must be accompanied by a government certificate validating: (1) The catch documentation is correct; (2) the tuna or tuna products meet the dolphin-safe standards under 50 CFR 216.91; and (3) the chain of custody information is correct.

The Assistant Administrator makes a determination of "regular and significant mortality or serious injury of dolphins" based upon the readily available information showing that the mortality or serious injury occurring in the fishery exceeds that of the large purse seine tuna fishery in the ETP.

A regular and significant determination will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the mortality and serious injury of dolphins for a particular fishery is less than that occurring in the large purse seine tuna fishery in the ETP.

Pursuant to 50 CFR 216.91(a)(3)(v), the Assistant Administrator considered readily available information and documentary evidence submitted, in response to letters requesting information, by the relevant governments and determined that gillnet fisheries harvesting tuna flagged under the jurisdiction of the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen have a regular and significant mortality or serious injury of dolphins in the course of those fishing operations.

After consultation with the Department of State, the Assistant Administrator issued a regular and significant determination for such gillnet fisheries to the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen. Tuna products from those fisheries harvested on fishing trips that begin on or after the effective date of this notice are therefore subject to the regulations set forth in 50 CFR 216.91(a)(3)(v) and (a)(5)(ii), including a requirement that tuna and tuna products from these fisheries exported from or offered for sale in the United States that are marketed as or include on the label of that product the term "dolphin safe" must be accompanied, as described in 50 CFR 216.91(a)(3)(v), by a written statement executed by both the captain of the vessel and also, as described above, a statement by an observer participating in a national or international program acceptable to the Assistant Administrator, that certifies that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and certain other required information regarding dolphin interactions and segregation of tuna.

The Assistant Administrator has not yet determined that any national or international observer program operating in the fisheries identified in this notice are "acceptable" for purposes of 50 CFR 216.91(a)(3)(v). To make determinations that an observer program is "acceptable" for purposes of 50 CFR 216.91(a)(3)(v), the Assistant Administrator will use the applicable criteria set forth in the **Federal Register** notice published July 14, 2014, (79 FR 40718) entitled "Determination of Observer Programs as Qualified and Authorized by the Assistant Administrator for Fisheries." Government authorities of the nations identified above are invited to submit information to NMFS that would support a determination that an observer program is acceptable for the purposes of making the statements required under 50 CFR 216.91(a)(3)(v).

Dated: September 21, 2016.

John Henderschedt,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2016–23333 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE560

Marine Mammals; File Nos. 19436 and 19592

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to the Aleut Community of St. Paul Island, Tribal Government, Ecosystem Conservation Office [File No. 19436], 2050 Venia Minor Road, P.O. Box 86, St. Paul Island, AK 99660 [Responsible Party: Pamela Lestenkof], and the St. George Traditional Council, Ecosystem Conservation Office [File No. 19592], P.O. Box 940, St. George Island, Alaska 99591 [Responsible Party: Chris Merculief], to conduct research on and export specimens of northern fur seals (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*) for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa González or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 9, 2016, notice was published in the **Federal Register** (81 FR 28052) that requests for permits to conduct research on and export specimens of northern fur seals (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*) for scientific research had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permits (Nos. 19436 and 19592) authorize the Permit Holders to perform a series of activities to fulfill their Biosampling, Entanglement/Disentanglement, and Island Sentinel Program responsibilities as established under the co-management agreements between NMFS and the Aleut Communities. See tables in the permits for authorized numbers of takes by species, stock and activity. The permits are valid until September 30, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS has determined that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and the Environmental Assessment for Issuance of Permits to take Steller Sea Lions by harassment during surveys using unmanned aerial systems (NMFS 2014), and that issuance of the permits would not have a significant adverse impact on the human environment.

As required by the ESA, issuance of the permits was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 22, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23316 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA160

Marine Mammals; File No. 15330

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., Cascadia Research, 218½ W. 4th Avenue, Olympia, WA 98501, has been issued a minor amendment to Scientific Research Permit No. 15330.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The original permit (No. 15330), issued on July 28, 2011 (76 FR 48146) authorized harassment of 40 cetacean species through vessel approach for sighting surveys, photographic identification, behavioral research, opportunistic sampling (breath, sloughed skin, fecal material, and prey remains), and aerial over-flights. All cetacean species except harbor porpoise (*Phocoena phocoena*), right whales (*Eubalaena japonica*), Cook Inlet beluga whales (*Delphinapterus leucas*), and unidentified mesoplodon and baleen species will be targeted for dart and/or suction-cup tagging. Import and export of marine mammal prey specimens, sloughed skin, fecal, and breath samples obtained is authorized. Seven species of pinnipeds may be incidentally harassed during research activities. The original permit was valid through August 1, 2016. The minor amendment (No. 15330–03) extends the duration of the permit through August 1, 2017, but does not change any other terms or conditions of the permit.

Dated: September 23, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23339 Filed 9–27–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE744

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Replacement Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with a pier replacement project at Naval Base Point Loma, San Diego, CA.

DATES: This authorization is effective from October 8, 2016, through October 7, 2017.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On June 16, 2016, we received a request from the Navy for authorization to take marine mammals incidental to pile installation and demolition associated with a pier replacement project in San Diego Bay at Naval Base Point Loma in San Diego, CA (NBPL), including a separate monitoring plan. The Navy also submitted a draft monitoring report on June 2, 2016, pursuant to requirements of the previous IHA. The Navy submitted revised versions of the request and monitoring plan on August 3, 2016 and a revised monitoring report on July 12, 2016. These documents were deemed adequate and complete. The pier replacement project is planned to occur over multiple years; this proposed IHA would cover only the fourth year of work and would be valid for a period of one year from the date of issuance. Hereafter, use of the generic term "pile driving" may refer to both pile installation and removal unless otherwise noted.

The use of both vibratory and impact pile driving, as well as various demolition techniques, is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), northern elephant seal (*Mirounga angustirostris*), gray whale (*Eschrichtius robustus*), bottlenose dolphin (*Tursiops truncatus truncatus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), and either short-beaked or long-beaked common dolphins (*Delphinus* spp.). California sea lions are present year-round and are very common in the project area, while bottlenose dolphins and harbor seals are common and likely to be present year-round but with more variable occurrence in San Diego Bay. Gray whales may be observed in San Diego Bay sporadically during migration periods. The remaining species are known to occur in nearshore waters outside San Diego Bay, but are generally only rarely observed near or in the bay. However, recent observations indicate that these species may occur in the project area and therefore could potentially be subject to incidental harassment from the aforementioned activities.

This is the fourth such IHA, following the IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539), from October 8, 2014, through October 7, 2015 (79 FR 65378), and from October 8, 2015, through October 7, 2016 (80 FR 62032). Monitoring reports are available online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* and provide environmental information related to issuance of this IHA for public review and comment.

Description of the Specified Activity

Overview

NBPL provides berthing and support services for Navy submarines and other fleet assets. The existing fuel pier serves as a fuel depot for loading and unloading tankers and Navy underway replenishment vessels that refuel ships at sea ("oilers"), as well as transferring fuel to local replenishment vessels and other small craft operating in San Diego Bay, and is the only active Navy fueling facility in southern California. Portions of the pier are over one hundred years old, while the newer segment was constructed in 1942. The pier as a whole is significantly past its design service life and does not meet current construction standards.

The Navy plans to demolish and remove the existing pier and associated pipelines and appurtenances while simultaneously replacing it with a generally similar structure that meets relevant standards for seismic strength and is designed to better accommodate modern Navy ships. Demolition and construction are planned to occur in two phases to maintain the fueling capabilities of the existing pier while the new pier is being constructed. During the fourth year of construction (the specified activity considered under this IHA), the Navy anticipates construction at two locations: the fuel pier area and at the Naval Mine and Anti-Submarine Warfare Command (NMAWC), where the Navy's Marine Mammal Program (MMP) was temporarily moved during fuel pier construction (see Figure 1–1 in the Navy's application). At the fuel pier, the Navy anticipates driving remaining concrete fender piles and driving remaining steel piles for mooring dolphins. At NMAWC, Navy anticipates extracting and driving concrete piles as needed to return the existing facility to its configuration prior to temporary placement of the MMP, which will be returned to its previous location near the fuel pier. For construction work at the fuel pier, Navy anticipates driving approximately 24 30-in steel pipe piles, 81 30 x 24-in concrete piles, and one 16-in concrete-filled fiberglass pile. Steel pipe piles would be installed to refusal using a vibratory driver and then finished using an impact hammer. Concrete piles would be installed to within five feet of tip elevation via jetting before being finished with an impact hammer, and the fiberglass pile would be installed entirely using an impact hammer. At NMAWC, Navy anticipates driving 21 16-in concrete piles using an impact hammer and removing forty existing 16-in concrete piles used for the temporary MMP relocation. See Table 1–4 in the Navy's application for more detail on piles to be installed.

The proposed actions with the potential to incidentally harass marine mammals within the waters adjacent to NBPL are vibratory and impact pile installation and certain demolition (*i.e.*, pile removal) techniques when not occurring concurrently with pile installation. Concurrent use of multiple pile driving rigs is not planned.

Dates and Duration

The activities planned during the fourth year of work associated with the fuel pier project would occur for one year from the date of issuance of this proposed IHA. Under the terms of a memorandum of understanding (MOU) between the Navy and the U.S. Fish and Wildlife Service (FWS), all noise- and turbidity-producing in-water activities in designated least tern foraging habitat are to be avoided during the period when least terns are present and engaged in nesting and foraging (a window from approximately May 1 through September 15). However, it is possible that in-water work not expected to result in production of significant noise or turbidity (*e.g.*, demolition activities) could occur at any time during the period of validity of this IHA. The conduct of any such work would be subject to approval from FWS under the terms of the MOU. We expect that in-water construction work will primarily occur from October through April. Pile driving will occur during normal working hours (approximately 7 a.m. to 6 p.m.), and will not occur earlier than 45 minutes after sunrise or later than 45 minutes before sunset.

Specific Geographic Region

NBPL is located on the peninsula of Point Loma near the mouth and along the northern edge of San Diego Bay (see Figures 1–1 and 1–2 in the Navy's application). San Diego Bay is a narrow, crescent-shaped natural embayment oriented northwest-southeast with an approximate length of 24 km and a total area of roughly 4,500 ha. The width of the bay ranges from 0.3 to 5.8 km, and depths range from 23 m mean lower low water (MLLW) near the tip of Ballast Point to less than 2 m at the southern end (see Figure 2–1 of the Navy's application). San Diego Bay is a heavily urbanized area with a mix of industrial, military, and recreational uses. The northern and central portions of the bay have been shaped by historic dredging to support large ship navigation. Dredging occurs as necessary to maintain constant depth within the navigation channel. Outside the navigation channel, the bay floor consists of platforms at depths that vary slightly. Sediments in northern San Diego Bay are relatively sandy as tidal currents tend to keep the finer silt and clay fractions in suspension, except in harbors and elsewhere in the lee of structures where water movement is diminished. Much of the shoreline consists of riprap and manmade structures. San Diego Bay is heavily used by commercial, recreational, and military vessels, with an average of over 80,000 vessel movements (in or out of the bay) per year (not including recreational boating within the Bay) (see Table 2–2 of the Navy's application). For more information about the specific geographic region, please see section 2.3 of the Navy's application.

Detailed Description of Activities

In order to provide context, we described the entire project in our **Federal Register** notice of proposed authorization associated with the first-year IHA (78 FR 30873; May 23, 2013). Please see that document for an overview of the entire fuel pier replacement project, or see the Navy's Environmental Assessment (2013) for more detail. In the notice of proposed authorization associated with the fourth-year IHA (81 FR 52637; August 9, 2016) we provided an overview of relevant construction methods before describing only the specific project portions scheduled for completion during the fourth work window. We do not repeat that information here; please refer to that document for more information. For the fourth year of work, approximately 106 steel and concrete piles are expected to be installed, completing in-water construction work for the new pier (with a total of approximately 518 steel and concrete piles installed). The Navy anticipates the need to request a fifth IHA related to completion of demolition work.

Description of Work Accomplished

During the first in-water work season, two primary activities were conducted: relocation of the MMP and the Indicator Pile Program (IPP). During the second in-water work season, the IPP was concluded and simultaneous construction of the new pier and demolition of the old pier begun. Production pile driving continued during the third in-water work season (2015–16). These activities were detailed in our **Federal Register** notice of proposed authorization (81 FR 52637; August 9, 2016) and are not repeated here.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on August 9, 2016 (81 FR 52637). We received a letter from the Marine Mammal Commission; the Commission's recommendation and our response is provided here, and the comments have been posted on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* Please see the Commission's letter for background and rationale regarding this recommendation.

Comment 1: The Commission provided some general discussion of approaches to estimation of take, and recommends that the following methods be used consistently for all future incidental take authorizations: (1) Apply a 24-hour reset policy for enumerating the number of each species that could be taken during proposed activities, (2) apply standard rounding rules before summing the numbers of estimated takes across days, and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates.

Response: Calculating predicted take is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculation given certain circumstances. We believe, however, that the methodology for this action remains appropriate.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which are either resident or have known seasonal occurrence in the vicinity of San Diego Bay, including the California sea lion, harbor seal, bottlenose dolphin, and gray whale (see Figures 3–1 through 3–4 and 4–1 in the Navy's application). In addition, common dolphins (see Figure 3–4 in the Navy's application), the Pacific white-sided dolphin, Risso's dolphin, and northern elephant seals are known to occur in deeper waters in the vicinity of San Diego Bay and/or have been observed within the bay during the course of this project's monitoring. Although the latter three species of cetacean would not generally be expected to occur within the project area, the potential for changes in occurrence patterns in conjunction with recent observations leads us to believe that authorization of incidental take is warranted. Common dolphins have been documented regularly at the Navy's nearby Silver Strand Training Complex, and were observed in the project area during previous years of project activity. The Pacific white-sided dolphin has been sighted along a previously used transect on the opposite side of the Point Loma peninsula (Merkel and Associates, 2008) and there were several observations of Pacific white-sided dolphins during Year 2 monitoring. Risso's dolphin is fairly common in southern California coastal waters (*e.g.*, Campbell *et al.*, 2010), and could occur in the bay. Northern elephant seals are included, based on their continuing increase in numbers along the Pacific coast (Carretta *et al.*, 2016), and the likelihood that animals that reproduce on the islands offshore of Baja California and mainland Mexico—where the population is also increasing—could move through the project area during migration. A juvenile elephant seal was observed near the fuel pier in April 2015.

Note that common dolphins could be either short-beaked (*Delphinus delphis delphis*) or long-beaked (*D. delphis bairdii*). While it is likely that common dolphins observed in the project area would be long-beaked, as it is the most frequently stranded species in the area from San Diego Bay to the U.S.-Mexico border (Danil and St. Leger, 2011), the species distributions overlap and it is unlikely that observers would be able to differentiate them in the field. Therefore, we consider that any common dolphins observed—and any incidental take of common dolphins—could be either stock.

In addition, other species that occur in the Southern California Bight may have the potential for isolated occurrence within San Diego Bay or just offshore. In particular, a short-finned pilot whale (*Globicephala macrorhynchus*) was observed off Ballast Point, and a Steller sea lion (*Eumetopias jubatus monteriensis*) was seen in the project area during Year 2. These species are not typically observed near the project area and, unlike the previously mentioned species, we do not believe it likely that they will occur in the future. Given the unlikelihood of their exposure to sound generated from the project, these species are not considered further.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Southern California and Point Mugu Operating Areas, which provides information regarding the biology and behavior of the marine resources that may occur in those operating areas (DoN, 2008). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed July 26, 2016). In addition, we provided information for the potentially affected stocks, including details of stock-wide status, trends, and threats, in our **Federal Register** notices of proposed authorization associated with the first- and second-year IHAs (78 FR 30873; May 23, 2013 and 79 FR 53026; September 5, 2014) and refer the reader to those documents rather than reprinting the information here.

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBPL during the project timeframe and summarizes key information regarding stock status and abundance. See also Figures 3–1 through 3–5 of the Navy's application for observed occurrence of marine mammals in the project area. Taxonomically, we follow Committee on Taxonomy (2016). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars*, for more detailed accounts of these stocks' status and abundance. All potentially affected species are addressed in the Pacific SARs (Carretta *et al.*, 2016).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBPL

Species	Stock	ESA/MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR[3]	Annual M/SI[4]	Relative occurrence in San Diego Bay; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	Eastern North Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	132	Occasional migratory visitor; winter.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Bottlenose dolphin	California coastal	-; N	323[5] (0.13; 290; 2005)	2.4	0.2	Common; year-round.
Short-beaked common dolphin.	California/Oregon/Washington.	-; N	411,211 (0.21; 343,990; 2008).	3,440	64	Occasional; year-round (but more common in warm season).
Long-beaked common dolphin.	California	-; N	107,016 (0.42; 76,224; 2009).	610	13.8	Occasional; year-round (but more common in warm season).
Pacific white-sided dolphin.	California/Oregon/Washington.	-; N	26,930 (0.28; 21,406; 2008).	171	17.8	Uncommon; year-round.
Risso's dolphin	California/Oregon/Washington.	-; N	6,272 (0.3; 4,913; 2008)	39	1.6	Rare; year-round (but more common in cool season).
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Abundant; year-round.
Family Phocidae (earless seals)						
Harbor seal	California	-; N	30,968 (n/a; 27,348; 2012).	1,641	43	Common; year-round.
Northern elephant seal	California breeding	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8	Rare; year-round.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

[5] This value is based on photographic mark-recapture surveys conducted along the San Diego coast in 2004–05, but is considered a likely underestimate, as it does not reflect that approximately 35 percent of dolphins encountered lack identifiable dorsal fin marks (Defran and Weller, 1999). If 35 percent of all animals lack distinguishing marks, then the true population size would be closer to 450–500 animals (Carretta *et al.*, 2015).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notices of proposed authorization associated with the first- and second-year IHAs (78 FR 30873; May 23, 2013 and 79 FR 53026; September 5, 2014). The specified activity associated with this IHA is substantially similar to those considered for the first- and second-year IHAs and the potential effects of the specified activity are the same as those identified in those documents. Therefore, we do not reprint the information here but refer the reader to those documents. We also provided brief definitions of relevant acoustic terminology in our notice of proposed authorization associated with this IHA (81 FR 52637; August 9, 2016).

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The mitigation strategies described below largely follow those required and successfully implemented under the first three IHAs associated with this project. For this IHA, data from acoustic monitoring conducted during the first three years of work was used to estimate zones of influence (ZOIs) (see "Estimated Take by Incidental Harassment"); these values were used to develop mitigation measures for pile driving activities at NBPL. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition, the Navy has defined buffers to the estimated Level A harassment zones to further reduce the potential for Level A harassment. In addition to the measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustic monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to avoid the potential for acoustic injury. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing or minimizing potential for some outcome for marine mammals, such as auditory injury or severe behavioral reactions. In this case, neither serious injury nor death are likely outcomes even in the absence of mitigation measures due to the nature of the specified activity. A minimum shutdown zone of 10 m will be established during all pile driving and removal activities. In addition the Navy will implement shutdown zones that are intended to significantly reduce the potential for Level A harassment. The Navy considered typical swim speeds (Godfrey, 1985; Lockyer and Morris, 1987; Fish, 1997; Fish *et al.,* 2003; Rohr *et al.,* 2002; Noren *et al.,* 2006) and past field experience (*e.g.,* typical elapsed time from observation of an animal to shutdown of equipment) in initially defining these buffered zones, and then evaluated the practicality and effectiveness of the zones during the Year 2 construction period. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

Disturbance Zone—Disturbance zones are the areas in which sound pressure levels (SPL) equal or exceed 160 and 120 dB root mean square (RMS) (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see "Monitoring and Reporting").

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data.

Acoustic measurements will continue during the fourth year of project activity and zones would be adjusted as indicated by empirical data. Please see the Navy's Acoustic and Marine Species Monitoring Plan (Monitoring Plan; available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) for full details.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable (as defined in the Monitoring Plan) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid

potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile and for thirty minutes following the conclusion of pile driving.

Timing Restrictions

In-order to avoid impacts to least tern populations when they are most likely to be foraging and nesting, in-water work will be concentrated from October 1-April 1 or, depending on circumstances, to April 30. However, this limitation is in accordance with agreements between the Navy and FWS, and is not a requirement of this IHA. All in-water construction activities would occur only from 45 minutes after sunrise to 45 minutes before sunset.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." The project will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior thirty minutes.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that the planned mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

Please see the Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) for full details of the requirements for monitoring and reporting. Notional monitoring locations (for biological and acoustic monitoring) are shown in Figures 3–1 and 3–2 of the Plan. The purpose of this Plan is to provide protocols for acoustic and marine mammal monitoring implemented during pile driving and removal activities. We have determined this monitoring plan, which is summarized here and which largely follows the monitoring strategies required and successfully implemented under the previous IHAs, to be sufficient to meet the MMPA's monitoring and reporting requirements. The previous monitoring plan was modified to integrate adaptive changes to the monitoring methodologies as well as updates to the scheduled construction activities. Monitoring objectives are as follows:

- Monitor in-water construction activities, including the implementation of in-situ acoustic monitoring efforts to continue to measure SPLs from in-water construction and demolition activities not previously monitored or validated during the previous IHAs. This will include collection of acoustic data for activities and pile types for which sufficient data has not previously been collected, including for diamond saw cutting of caissons during fuel pier demolition. The Navy also plans to collect acoustic data for removal of 30-in steel piles via either vibratory extraction or torch cutting.
- Monitor marine mammal occurrence and behavior during in-water construction activities to minimize marine mammal impacts and effectively document marine mammals occurring within ZOI boundaries.

Acoustic Measurements

The primary purpose of acoustic monitoring is to empirically verify modeled disturbance zones (defined at radial distances to NMFS-specified thresholds; see "Estimated Take by Incidental Harassment" below). For non-pulsed sound, distances will continue to be evaluated for attenuation to the point at which sound becomes indistinguishable from background levels. Empirical acoustic monitoring data will be used to document transmission loss values determined from measurements collected during the IPP and to examine site-specific differences in SPL and affected ZOIs on an as-needed basis.

Should monitoring results indicate it is appropriate to do so, marine mammal mitigation zones may be revised as necessary to encompass actual ZOIs. Acoustic monitoring will be conducted as specified in the approved Monitoring Plan. Please see Table 2–2 of the Plan for a list of equipment to be used during acoustic monitoring. Monitoring locations will be determined based on results of previous acoustic monitoring effort and the best professional judgment of acoustic technicians.

No acoustic data will be collected for 30-in steel piles as sufficient data has been collected for 36-in steel piles during previous years. For other activities, such as fender pile driving and demolition, the Navy will continue to collect in situ acoustic data to validate source levels and ZOIs. Environmental data would be collected including but not limited to: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats). Full details of acoustic monitoring requirements may be found in section 4.2 of the Navy's Monitoring Plan.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving as described under "Mitigation" and in the Monitoring Plan, with observers located at the best practicable vantage points. Notional monitoring locations are shown in Figures 3–1 and 3–2 of the Navy's Plan. Please see that plan, available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm,* for full details of the required marine mammal monitoring. Section 3.2 of the Plan and section 13 of the Navy's application offer more detail regarding monitoring protocols. Based on our requirements, the Navy would implement the following procedures for pile driving:

- Marine mammal observers (MMO) would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

One MMO will be placed in the most effective position near the active construction/demolition platform in order to observe the respective shutdown zones for vibratory and impact pile driving or for applicable demolition activities. Monitoring will be primarily dedicated to observing the shutdown zone; however, MMOs will record all marine mammal sightings beyond these distances provided it did not interfere with their effectiveness at carrying out the shutdown procedures. Additional land, pier, or vessel-based MMOs will be positioned to monitor the shutdown zones and the buffer zones, as notionally indicated in Figures 3–1 and 3–2 of the Navy's application.

During driving of steel piles, at least four additional MMOs (five total) will be deployed. Three of the five MMOs will be positioned in various pier-based locations around the new fuel pier to monitor the ZOIs. Two of these will be stationed at the north and south ends of the second deck of the new pier, and one MMO will be stationed on a second story balcony of a building on the existing pier. This building is scheduled to be demolished as part of the project. When the building is removed, a suitable secondary location with similar visibility will be used as an observation location. One MMO will be positioned in a boat at or near floating docks associated, and will focus on the furthest extent of the 450-m cetacean shutdown ZOI. The fifth MMO will be positioned on a second-story balcony of a Navy building on Ballast Point at the entrance to San Diego Bay, will focus on the furthest extent of the Level B ZOIs, and will monitor for marine mammals as they enter or exit San Diego Bay.

One additional team member—the "Command" position—will remain on the construction barge for the duration of monitoring efforts, and will log pile driving start and stop times. This position will act as a secondary MMO during monitoring efforts, but will not log marine species observations as part of their normal duties. They will use either verbal or visual communication procedures to stop active construction if an animal enters the shutdown zones.

During driving of 24 x 30-in concrete fender piles, two MMOs and the additional "Command" team member will be on duty. The two MMOs will be stationed on the second deck of the new fuel pier in the most appropriate locations. During driving of the 16-in poly-concrete pile, one MMO and the "Command" position will be on duty. One MMO will be on duty during demolition using the diamond saw. During activity at the NMAWC site, at least two MMOs will be on duty and will be located at the most appropriate positions.

The MMOs will record all visible marine mammal sightings. Confirmed takes will be registered once the sightings data has been overlaid with the appropriate zones visualized in Figures 6–2, 6–3, and 6–4 of the Navy's application, or based on refined acoustic data, if amendments to the ZOIs are needed. Acousticians on duty may be noting SPLs in real-time, but, to avoid biasing the observations, will not communicate that information directly to the MMOs. These platforms may move closer to, or farther from, the source depending on whether received SPLs are less than or greater than the regulatory threshold values. All MMOs will be in radio communication with each other so that the MMOs will know when to anticipate incoming marine mammal species and when they are tracking the same animals observed elsewhere.

If any species for which take is not authorized is observed by a MMO during applicable construction or demolition activities, all construction will be stopped immediately. If a boat is available, MMOs will follow the animal(s) at a minimum distance of 100 m until the animal has left the Level B ZOI. Pile driving will commence if the animal has not been seen inside the Level B ZOI for at least one hour of observation. If the animal is resighted again, pile driving will be stopped and a boat-based MMO (if available) will follow the animal until it has left the Level B ZOI.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity, and if possible, the correlation to measured SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

In addition, photographs will be taken of any gray whales observed. These photographs would be submitted to NMFS' West Coast Regional Office for comparison with photo-identification catalogs to determine whether the whale is a member of the western North Pacific population.

Reporting

A draft report will be submitted to NMFS within 45 calendar days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions. A final report will be prepared and submitted within thirty days following resolution of comments on the draft report. Required contents of the monitoring reports are described in more detail in the Navy's Acoustic and Marine Species Monitoring Plan.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorizations for this project. Acoustic and marine mammal monitoring was implemented as required, with marine mammal monitoring occurring before, during, and after each pile driving event. During the course of Year 3 activities, the Navy did not exceed the take levels authorized under the IHA. Previous acoustic and marine mammal monitoring results were detailed in our **Federal Register** notice of proposed authorization (81 FR 52637; August 9, 2016) and are not repeated here.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving or demolition and involving temporary changes in behavior. The planned mitigation and monitoring measures (*i.e.,* buffered shutdown zones) are expected to minimize the possibility of Level A harassment such that we believe it is unlikely. We do not expect that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.*, because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals (with the exception of California sea lions, which are attracted to nearby haul-out opportunities). Sightings of other species are relatively rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy requested authorization for the potential taking of small numbers of California sea lions, harbor seals, bottlenose dolphins, common dolphins, Pacific white-sided dolphins, Risso's dolphins, northern elephant seals, and gray whales in San Diego Bay and nearby waters that may result from pile driving during construction activities associated with the fuel pier replacement project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we typically first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. In this case, we have acoustic data from project monitoring that provides empirical information regarding the sound fields likely produced by project activities.

We provided detailed information regarding the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidents of take, in our **Federal Register** notice of proposed authorization (81 FR 52637; August 9, 2016). That information is unchanged, and our take estimates were calculated in the same manner and on the basis of the same information as what was described in the **Federal Register** notice. Total estimated incidents of take are shown in Table 3. Please see our **Federal Register** notice of proposed authorization (81 FR 52637; August 9, 2016) for full details of the process and information used in estimating potential incidents of take.

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new guidance established new thresholds for predicting auditory injury, or permanent threshold shift (PTS), which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** notice announcing the Guidance (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well as consideration of where the action is in the agency's decision-making pipeline. In that notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new guidance, including: The scope of effects; how far in the process the applicant has progressed; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the guidance is expected to affect our analysis.

In this case, Navy submitted a timely request for authorization that was determined to be adequate and complete prior to availability of the guidance and indicated that they would need to receive an IHA (if issued) by September 2016. The Navy's analysis considered the potential for auditory injury to marine mammals, but ultimately concluded that injury would be unlikely to occur due to their robust mitigation measures. As described previously, the Navy calculated Level A harassment mitigation zones on the basis of NMFS' then-current thresholds for onset of permanent threshold shift (*i.e.*, 180/190 dB rms), and then increased the size of those zones by adding buffers intended to further minimize the potential for Level A harassment. Following release of the new Guidance, we have considered the likely implications for potential auditory injury of marine mammals. Based on the Guidance, likely injury zones would increase in size for two hearing groups that might be present in the Navy's project area. However, low-frequency cetaceans (*e.g.*, gray whales) rarely enter San Diego Bay and are extremely unlikely to approach the fuel pier construction area within several hundred meters. Phocid pinnipeds (*e.g.*, harbor seals) are more likely to be present in the construction area and to approach more closely, but the Navy's existing buffered shutdown zone for all pinnipeds (150 m) is larger than the injury zone indicated by the new guidance. Potential injury zones for other species expected to be present (*e.g.*, bottlenose dolphin, California sea lion) are much smaller than previously expected (less than 10 m).

When the Navy's mitigation is considered in combination with the fact that many marine mammals would be expected to intentionally avoid making close approaches to this stationary acoustic source, we believe that injury is unlikely. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis and appropriate protective measures are in place in the IHA.

Description of Take Calculation

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- The assumed ZOIs and days of activity are as shown in Table 2; and,

In this case, the estimation of marine mammal takes uses the following calculation:

Exposure estimate = n * ZOI * days of total activity

where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

The ZOI impact area is estimated using the relevant distances and assuming that sound radiates from a central point in the water column slightly offshore of the existing pier and taking into consideration the possible affected area due to topographical constraints of the action area (*i.e.*, radial distances to thresholds are not always reached). When local abundance is the best available information, in lieu of the density-area method described above, we may simply multiply some number of animals (as determined through counts of animals hauled-out) by the number of days of activity, under the assumption that all of those animals will be present and incidentally taken on each day of activity.

TABLE 2—AREAS OF ACOUSTIC INFLUENCE AND DAYS OF ACTIVITY

Activity	Number of days	ZOI (km²)
Impact and vibratory driving, 30-in steel piles[1]	24	5.6752
Vibratory removal, 30-in steel piles	6	5.6752
Impact driving, 24x32-in concrete piles	28	0.5377
Impact driving, 16-in concrete-filled fiberglass piles	1	0.2180
Diamond saw cutting	69	0.8842
Impact driving, 16-in concrete piles (NMAWC)	10	0.0436
Vibratory removal, 16-in concrete piles (NMAWC)	8	2.7913

[1] We assume that impact driving of 30-in steel piles would always occur on the same day as vibratory driving of the same piles. Therefore, the impact driving ZOI (3.8894 km²) would always be subsumed by the vibratory driving ZOI.

Where appropriate, we use average daily number of individuals observed within the project area during Navy marine mammal surveys converted to a density value by using the largest ZOI as the effective observation area. It is the opinion of the professional biologists who conducted these surveys that detectability of animals during these surveys, at slow speeds and under calm weather and excellent viewing conditions, approached 100 percent.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate (aside from the contingency correction discussed above). We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the period of validity, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative. See Table 3 for total estimated incidents of take.

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	Density	Vibratory driving/ removal, steel[1]	Impact driving, concrete 24 x 30	Impact driving, concrete/ fiberglass 16-in	Diamond saw	Impact driving, concrete (NMAWC)	Vibratory removal, concrete (NMAWC)	Total proposed authorized takes (% of total stock)
California sea lion	15.9201	2,710	240	3	971	7	113	4,044 (1.4)
Harbor seal	0.4987	85	8	0	30	0	4	127 (0.4)
Bottlenose dolphin	1.2493	213	19	0	76	1	9	[2] 318 (64.0)
Common dolphin	1.5277	260	23	0	93	1	11	[3] 388 (0.4 [LB]/ 0.1 [SB])
Gray whale	0.115	20	2	0	7	0	1	30 (0.1)
Northern elephant seal	0.0508	9	1	0	3	0	0	13 (0.01)
Pacific white-sided dolphin	0.0493	8	1	0	3	0	0	12 (0.04)
Risso's dolphin	0.2029	35	3	0	12	0	1	51 (0.8)

[1] We assume that impact driving of steel piles would occur on the same day as vibratory driving of the same piles and that the zone for vibratory driving would always subsume the zone for impact driving. Therefore, separate estimates are not provided for impact driving of steel piles.

[2] Total stock assumed to be 500 for purposes of calculation.

[3] LB = long-beaked; SB = short-beaked.

Analyses and Determinations

Negligible Impact Analysis

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Construction and demolition activities associated with the pier replacement project have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving or removal is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. For example, use of vibratory hammers does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (implementation of buffered shutdown zones) significantly reduce any possibility of injury. Given sufficient "notice" through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for San Diego Bay (approaching one hundred percent detection rate, as described by trained biologists conducting site-specific surveys) further enables the implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from past years of this project and other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; HDR, 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, we find that the total marine mammal take from Navy's pier replacement activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The number of incidents of take authorized for these stocks, with the exception of the coastal bottlenose dolphin (see below), would be considered small relative to the relevant stocks or populations (see Table 3) even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for pinnipeds occurring at the NBPL waterfront, there will almost certainly be some overlap in individuals present day-to-day and in general, there is likely to be some overlap in individuals present day-to-day for animals in estuarine/inland waters.

The numbers of authorized take for bottlenose dolphins are higher relative to the total stock abundance estimate and would not represent small numbers if a significant portion of the take was for a new individual. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is likely that a relatively small subset of California coastal bottlenose dolphins would be incidentally harassed by project activities. California coastal bottlenose dolphins range from San Francisco Bay to San Diego (and south into Mexico) and the specified activity would be stationary within an enclosed water body that is not recognized as an area of any special significance for coastal bottlenose dolphins (and is therefore not an area of dolphin aggregation, as evident in Navy observational records). We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that, based on the limited region of exposure in comparison with the known distribution of the coastal bottlenose dolphin, these estimated incidents of take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

The Navy initiated informal consultation under section 7 of the ESA with NMFS Southwest Regional Office (now West Coast Regional Office) on March 5, 2013. NMFS concluded on May 16, 2013, that the proposed action may affect, but is not likely to adversely affect, WNP gray whales. The Navy has not requested authorization of the incidental take of WNP gray whales and no such authorization was proposed, and there are no other ESA-listed marine mammals found in the action area. Therefore, no consultation under the ESA is required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pier replacement project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on July 8, 2013.

We have reviewed the Navy's application for a renewed IHA for ongoing construction activities for 2016–17 and the 2015–16 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHAs. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary, and, after review of public comments determine that the existing EA and FONSI provide adequate analysis related to the potential environmental effects of issuing an IHA to the Navy. The 2013 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described pier replacement activities in San Diego Bay, from October 8, 2016 through October 7, 2017, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 23, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23389 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE887

Notice of Intent To Prepare an Environmental Assessment on the Issuance of Incidental Take Authorizations in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Intent to prepare and Environmental Assessment.

SUMMARY: The National Marine Fisheries Service announces: (1) Its intent to prepare an Environmental Assessment (EA) to analyze the environmental impacts of issuing annual incidental harassment authorizations (IHAs) pursuant to the Marine Mammal Protection Act (MMPA) for the taking of marine mammals incidental to anthropogenic activities in the waters of Cook Inlet, Alaska, for the 2017 season; and (2) its intent to continue an annual cycle for issuing MMPA IHAs in Cook Inlet such that companies planning to submit IHA applications for work to be conducted in Cook Inlet in 2017 do so by no later than October 15, 2016. Further, we refer prospective applicants to our new Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*), which should be used in the analysis of auditory effects.

DATES: Applicants should submit applications to the Permits and Conservation Division in the Office of Protected Resources by October 15, 2016.

ADDRESSES: Applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing applications is *itp.youngkin@noaa.gov.* Applications sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for applications sent to addresses other than those provided here.

Instructions: All applications received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, (301) 427–8426.

SUPPLEMENTARY INFORMATION:

Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment for a period of one year or less, a notice of proposed authorization is provided to the public for review. The term "take" under the MMPA means "to harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill." Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment)."

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Concern for Cook Inlet Beluga Whales

Cook Inlet is a semi-enclosed tidal estuary located in southcentral Alaska and home to the Cook Inlet beluga whale, a small resident population that was designated as depleted under the MMPA and listed as an endangered species under the Endangered Species Act (ESA) in 2008. The stock has not recovered, despite implementing subsistence hunting regulations in 1999, and cessation of hunting in 2007. In light of this, and in recognition of the increasing industrial activity and development in Cook Inlet, NMFS has taken a number of actions that reflect the high level of concern for the species, including:

(1) On October 14, 2014, NMFS announced its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act to analyze the effects on the human environment of issuing authorizations for the incidental take of marine mammals from activities occurring in both the state and Federal waters of Cook Inlet, AK, from Knik Arm in the northern part of the Inlet to the southern edge of Kachemak Bay on the southeastern part of the Inlet and to the southern edge of Cape Douglas on the southwestern part of the Inlet ("Cook Inlet beluga EIS"). NMFS included a 75-day public comment period for the Notice of Intent and conducted a scoping meeting in Anchorage Alaska on November 3, 2014.

(2) On November 3, 2014, NMFS convened a multi-stakeholder meeting in Anchorage Alaska: Conservation and Recovery of Cook Inlet Beluga Whales in the Context of Continued Development. The purpose of the meeting was to engage stakeholders and begin exploring Cook Inlet specific solutions for mitigating and monitoring adverse effects on belugas, while also allowing for sustainable development. The first day of the two-day workshop was devoted to background and updates related to the status, ecology, and stressors of Cook Inlet belugas and the standards set by the MMPA and the ESA. The second day included an exploration of measures and strategies to minimize anthropogenic impacts, promote recovery, and increase understanding of impacts, as well as a discussion of these objectives in the context of ensuring MMPA and ESA compliance for future activities.

(3) In May 2015, NMFS unveiled its "Species in the Spotlight: Survive to Thrive" initiative. This initiative includes targeted efforts vital for stabilizing eight species—including the Cook Inlet beluga whale—identified among the most at risk for extinction. The approach involves intensive human efforts to stabilize these species, with the goal that they will become candidates for recovery.

(4) On May 15, 2015, NMFS released the Draft Recovery Plan for Cook Inlet Beluga Whale. The population continues to show a negative trend, despite the cessation of subsistence since 2007. Although the exact cause of the continued decline in the absence of subsistence hunting is unknown, the Recovery Plan identifies likely threats, including three threats of high relative concern: Noise, catastrophic events, and the cumulative and synergistic effects of multiple stressors. Threats of medium relative concern include disease, habitat loss or degradation, reduction in prey, and unauthorized take. Due to an incomplete understanding of the threats facing Cook Inlet beluga whales, NMFS is unable to identify with certainty the actions that will most immediately encourage recovery. Until we know which threats are limiting recovery, the strategy of the Recovery Plan is to focus on threats identified as medium or high concern.

Announcements

The actions summarized above are multi-year efforts that are not likely to result in substantial changes in the short-term. NMFS announces here additional steps to help inform agency decision making in the interim.

The preparation of an EIS is a lengthy and intensive process that, in the case of the for Cook Inlet beluga EIS, will likely take two or more years. Accordingly, in recognition of our ongoing concern over Cook Inlet belugas, while the Cook Inlet beluga EIS is being prepared, NMFS will develop an Environmental Assessment (EA) to analyze the effects of issuing of multiple, concurrent, one-year MMPA authorizations to take Cook Inlet beluga whales. An EA will aid us in more effectively assessing the cumulative effects of multiple activities and to more comprehensively consider a range of mitigation and monitoring measures in the context of the multiple activities.

MMPA Authorization Cycle (Application Deadlines)

To support NMFS' efforts to prepare an EA that covers multiple MMPA incidental harassment authorizations, NMFS is continuing an application cycle for incidental harassment authorizations that include Cook Inlet beluga whales for the 2017 open water season. NMFS requests all prospective MMPA incidental harassment authorization applicants for a given open water season to submit their applications by October 15th of the preceding calendar year (unless the activity is scheduled to occur before May, in which case they should be submitted earlier). Further, we refer potential applicants to our new Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*), which should be used in the analysis of auditory effects in an application. Receipt of those MMPA applications by October 15th will aid NMFS in the development of a timely and well-informed EA and related MMPA authorizations.

Dated: September 22, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23327 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty- and Quota-Free Benefits.

DATES: *Effective Date:* October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Homer Boyer, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–5156.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Pub. L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Pub. L. 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub.L. 109–432, and section 1 of The African Growth and Opportunity Amendments (Pub. L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and Title I, Section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Pub. L. 114–27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2016 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2016, and extending through September 30, 2017, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,966,511,796 square meters equivalent. Of this amount, 983,255,898 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Felicia Pullam,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2016–23317 Filed 9–27–16; 8:45 am]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this notice to announce the renewal of the Global Markets Advisory Committee (GMAC). The Commission has determined that the renewal of the GMAC is necessary and in the public's interest, and the Commission has consulted with the General Services Administration's Committee Management Secretariat regarding the GMAC's renewal.

FOR FURTHER INFORMATION CONTACT: Ward P. Griffin, GMAC Designated Federal Officer, at 202–418–5425 or *wgriffin@cftc.gov.*

SUPPLEMENTARY INFORMATION: The GMAC's objectives and scope of activities are to conduct public meetings, and to submit reports and recommendations on matters of public concern to the exchanges, firms, market users, and the Commission regarding the regulatory challenges of a global marketplace, which reflect the increasing interconnectedness of markets and the multinational nature of business. The GMAC will help the Commission determine how it can avoid unnecessary regulatory or operational impediments to global business while still preserving core protections for customers and other market participants. The GMAC will also make recommendations for appropriate international standards for regulating futures, swaps, options, and derivatives markets, as well as intermediaries. Additionally, the GMAC will assist the Commission in assessing the impact on U.S. markets and firms of the Commission's international efforts and the initiatives of foreign regulators and market authorities. The GMAC will also assist with identifying methods to improve both domestic and international regulatory structures while continuing to allow U.S. markets and firms to remain competitive in the global market.

The GMAC will operate for two years from the date of renewal unless the Commission directs that the GMAC terminate on an earlier date. A copy of the GMAC renewal charter has been filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the renewal charter will be posted on the Commission's Web site at *www.cftc.gov.*

Dated: September 23, 2016.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–23351 Filed 9–27–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2016–HA–0032]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 28, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application: OMB Control Number 0720–0030.

Type of Request: Extension.

Number of Respondents: 14,550.

Responses per Respondent: 2.

Annual Responses: 29,100.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 7,275 hours.

Needs and Uses: The information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: September 23, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–23368 Filed 9–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0050]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 28, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Program Point of Contact Information; OMB Control Number 0704–0490.

Type of Request: Extension.

Number of Respondents: 935.

Responses per Respondent: 1.

Annual Responses: 935.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 312.

Needs and Uses: The information collection requirement is necessary to execute the voluntary Defense Industrial Base (DIB) Cybersecurity (CS) program. DoD will collect business points of contact (POC) information from all DIB CS program participants on a one-time basis, with updates as necessary, to facilitate communications and the sharing of share unclassified and classified cyber threat information.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: September 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–23307 Filed 9–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0075]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Borrower Defense to Loan Repayment Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 28, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0075. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Borrower Defense to Loan Repayment Form.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individual or Households.

Total Estimated Number of Annual Responses: 10,000.

Total Estimated Number of Annual Burden Hours: 10,000.

Abstract: The Department of Education (the Department) requests approval of this new collection of an Application for Borrower Defense to Loan Repayment form (''Universal Borrower Defense Form'') to ensure that all borrowers have a consistent platform to petition for relief, and to facilitate the Department's receipt of clear and complete information necessary to process applications efficiently. This form will facilitate processing claims from student borrowers who believe that they have a Borrower Defense claim regarding their Federal Loans. The form will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications efficiently. The Universal Borrower Defense Form will set forth examples of the types of activities that could form the basis of borrowers' claims for Borrower Defense relief. A successful Borrower Defense claim would provide a full or partial discharge of a borrower's loans, as well as reimbursement of amounts previously paid (if appropriate).

Dated: September 23, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23400 Filed 9–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0087]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Teacher and Principal Survey of 2017–2018 (NTPS 2017–18) Preliminary Field Activities

AGENCY: Department of Education (ED), National Center for Education Statistics (NCES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 28, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0087. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Teacher and Principal Survey of 2017–2018 (NTPS 2017–18) Preliminary Field Activities.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 13,015.

Total Estimated Number of Annual Burden Hours: 3,537.

Abstract: The National Teacher and Principal Survey (NTPS), conducted biennially by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. This request is to contact districts and schools in order to begin preliminary activities for NTPS 2017–18, namely: (a) Contacting and seeking research approvals from special contact districts, where applicable, (b) notifying districts that their school(s) have been selected for NTPS 2017–18, and (c) notifying sampled schools of their selection for the survey and verifying their mailing addresses.

Dated: September 23, 2016.

Kathy Axt,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23343 Filed 9–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0073]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FFEL/Direct Loan/Perkins Military Service Deferment/Post-Active Duty Student Deferment Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 28, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0073. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: FFEL/Direct Loan/Perkins Military Service Deferment/Post-Active Duty Student Deferment Request.

OMB Control Number: 1845–0080.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 16,000.

Total Estimated Number of Annual Burden Hours: 8,000.

Abstract: The Military Service/Post-Active Duty Student Deferment request form serves as the means by which a Federal Family Education Loan (FFEL), Perkins, or Direct Loan borrower requests a military service deferment and/or post-active duty student deferment and provides his or her loan holder with the information needed to determine whether the borrower meets the applicable deferment eligibility requirements. The form also serves as the means by which the U.S. Department of Education identifies Direct Loan borrowers who qualify for the Direct Loan Program's no accrual of interest benefit for active duty service members.

Dated: September 23, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23342 Filed 9–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0086]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Operational Field Test (OFT) and Recruitment for Main Study Base-Year

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 28, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0086. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Operational Field Test (OFT) and Recruitment for Main Study Base-year.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 34,952.

Total Estimated Number of Annual Burden Hours: 17,391.

Abstract: The Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) is the first study conducted by the National Center for Education Statistics (NCES) to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Main Study Base-year data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students beginning in January 2018, with annual follow-ups beginning in January 2019 and in January 2020 when most of the students in the sample will be in grades 7 and 8, respectively. In preparation for the national data collection, referred to as the Main Study, the data collection instruments and procedures must be field tested. This request is to conduct three components of the study: (1) The MGLS:2017 Operational Field Test (OFT) data collection from January to June 2017; (2) the recruitment of schools for the Main Study Base-year beginning in January 2017; and (3) the tracking of OFT students and associated recruitment of schools beginning in summer 2017 in preparation for the first follow-up OFT data collection. An Item Validation Field Test (IVFT) was conducted in the winter/spring of 2016 to determine the psychometric properties of assessment and survey items and the predictive potential of items so that valid, reliable, and useful assessment and survey instruments can be composed for the Main Study. The primary purpose of the OFT is to: Obtain information on recruiting, particularly for students in three focal IDEA-defined disability groups; obtain a tracking sample that can be used to study mobility patterns in subsequent years; and test protocols and administrative procedures. The OFT will inform the materials and procedures for the main study base year and follow-up data collections. Because the OFT recruitment will still be ongoing at the time this request is approved, the burden and materials from the MGLS:2017 Recruitment for the 2017 OFT request (OMB# 1850–0911 v. 6,9,10) are being carried over in this submission.

Dated: September 23, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23341 Filed 9–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Thursday, September 22, 2016.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–157–000.

Applicants: Deerfield Wind Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Deerfield Wind Energy, LLC.

Filed Date: 9/22/16.

Accession Number: 20160922–5049.

Comments Due: 5 p.m. ET 10/13/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1943–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Missouri River Energy Services Formula Rate Compliance Filing to be effective 1/1/2017.

Filed Date: 9/22/16.

Accession Number: 20160922–5139.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–829–000.

Applicants: Southwest Power Pool, Inc.

Description: Report Filing: Refund Report in ER16–829—Bylaws Section 8.4 Revisions to be effective N/A.

Filed Date: 9/22/16.

Accession Number: 20160922–5038.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2340–001.

Applicants: Emera Energy Services Subsidiary No. 6 LLC.

Description: Tariff Amendment: Errata to be effective 7/1/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5106.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2341–001.

Applicants: Emera Energy Services Subsidiary No. 7 LLC.

Description: Tariff Amendment: Errata to be effective 7/1/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5102.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2342–001.

Applicants: Emera Energy Services Subsidiary No. 8 LLC.

Description: Tariff Amendment: Errata to be effective 7/1/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5101.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2343–001.

Applicants: Emera Energy Services Subsidiary No. 9 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5098.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2344–001.
Applicants: Emera Energy Services Subsidiary No. 10 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5097.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2347–001.
Applicants: Bridgeport Energy LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5109.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2376–000; ER16–2377–000.
Applicants: FPL Energy Marcus Hook, L.P.
Description: Supplement to August 4, 2016 FPL Energy Marcus Hook, L.P. and FPL Energy MH50, L.P. tariff filings (Reactive Power Capability Testing Forms).
Filed Date: 9/22/16.
Accession Number: 20160922–5137.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2455–001.
Applicants: Emera Energy Services Subsidiary No. 11 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5096.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2456–001.
Applicants: Emera Energy Services Subsidiary No. 12 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5095.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2457–001.
Applicants: Emera Energy Services Subsidiary No. 13 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5093.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2458–001.
Applicants: Emera Energy Services Subsidiary No. 14 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5092.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2459–001.
Applicants: Emera Energy Services Subsidiary No. 15 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5090.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2496–001.
Applicants: CXA Sundevil I, Inc.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 9/30/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5088.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2497–001.
Applicants: CXA Sundevil II, Inc.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 9/30/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5089.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2639–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement Nos. 3069 and 3070; Queue Nos. V4–046/V4–047 and V4–048/V4–049 to be effective 8/22/2016.
Filed Date: 9/21/16.
Accession Number: 20160921–5141.
Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2642–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: DSA Mojave Water Agency Deep Creek Hydroelectric Project to be effective 11/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5072.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2643–000.
Applicants: Panda Stonewall LLC.
Description: Baseline eTariff Filing: FERC Electric Tariff, Volume No. 1 (Market-Based Rate Application) to be effective 11/21/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5077.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2644–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Contribution in Aid of Construction Agreement to be effective 9/18/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5086.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2646–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Concurrence of EPE to APS Service Agreement No. 284 to be effective 10/31/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5111.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2647–000.
Applicants: Puget Sound Energy, Inc.
Description: Initial rate filing: BPA NITSA & NOA to be effective 9/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5121.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2648–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Tariff Cancellation: Notice of cancellation SA 1949 among NMPC and EDGE Corporation to be effective 11/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5160.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2649–000.
Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: Loss Factor Filing Amendment to be effective 8/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5165.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2650–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Tariff Cancellation: Notice of cancellation SA 1951 between NYISO, NMPC and NYPA to be effective 11/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5168.
Comments Due: 5 p.m. ET 10/13/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–55–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Application of Consolidated Edison Company of New York, Inc. for an order pursuant to Section 204 of the Federal Power Act.
Filed Date: 9/21/16.
Accession Number: 20160921–5184.
Comments Due: 5 p.m. ET 10/12/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23446 Filed 9–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–157–000.
Applicants: Deerfield Wind Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Deerfield Wind Energy, LLC.
Filed Date: 9/22/16.
Accession Number: 20160922–5049.
Comments Due: 5 p.m. ET 10/13/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1943–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Missouri River Energy Services Formula Rate Compliance Filing to be effective 1/1/2017.
Filed Date: 9/22/16.
Accession Number: 20160922–5139.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–829–000.
Applicants: Southwest Power Pool, Inc.
Description: Report Filing: Refund Report in ER16–829—Bylaws Section 8.4 Revisions to be effective N/A.
Filed Date: 9/22/16.
Accession Number: 20160922–5038.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2340–001.
Applicants: Emera Energy Services Subsidiary No. 6 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5106.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2341–001.
Applicants: Emera Energy Services Subsidiary No. 7 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5102.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2342–001.
Applicants: Emera Energy Services Subsidiary No. 8 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5101.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2343–001.
Applicants: Emera Energy Services Subsidiary No. 9 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5098.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2344–001.
Applicants: Emera Energy Services Subsidiary No. 10 LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5097.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2347–001.
Applicants: Bridgeport Energy LLC.
Description: Tariff Amendment: Errata to be effective 7/1/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5109.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2376–000; ER16–2377–000.
Applicants: FPL Energy Marcus Hook, L.P.
Description: Supplement to August 4, 2016 FPL Energy Marcus Hook, L.P. and FPL Energy MH50, L.P. tariff filings (Reactive Power Capability Testing Forms).
Filed Date: 9/22/16.
Accession Number: 20160922–5137.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2455–001.
Applicants: Emera Energy Services Subsidiary No. 11 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5096.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2456–001.
Applicants: Emera Energy Services Subsidiary No. 12 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5095.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2457–001.
Applicants: Emera Energy Services Subsidiary No. 13 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5093.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2458–001.
Applicants: Emera Energy Services Subsidiary No. 14 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5092.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2459–001.
Applicants: Emera Energy Services Subsidiary No. 15 LLC.
Description: Tariff Amendment: Errata to be effective 10/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5090.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2496–001.
Applicants: CXA Sundevil I, Inc.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 9/30/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5088.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2497–001.
Applicants: CXA Sundevil II, Inc.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 9/30/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5089.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2639–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement Nos. 3069 and 3070; Queue Nos. V4–046/V4–047 and V4–048/V4–049 to be effective 8/22/2016.
Filed Date: 9/21/16.
Accession Number: 20160921–5141.
Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2642–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: DSA Mojave Water Agency Deep Creek Hydroelectric Project to be effective 11/22/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5072.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2643–000.
Applicants: Panda Stonewall LLC.
Description: Baseline eTariff Filing: FERC Electric Tariff, Volume No. 1 (Market-Based Rate Application) to be effective 11/21/2016.
Filed Date: 9/22/16.
Accession Number: 20160922–5077.
Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2644–000.
Applicants: Northern Indiana Public Service Company.

Description: § 205(d) Rate Filing: Contribution in Aid of Construction Agreement to be effective 9/18/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5086.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2646–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Concurrence of EPE to APS Service Agreement No. 284 to be effective 10/31/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5111.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2647–000.

Applicants: Puget Sound Energy, Inc.

Description: Initial rate filing: BPA NITSA & NOA to be effective 9/1/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5121.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2648–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Tariff Cancellation: Notice of cancellation SA 1949 among NMPC and EDGE Corporation to be effective 11/22/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5160.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2649–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Loss Factor Filing Amendment to be effective 8/1/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5165.

Comments Due: 5 p.m. ET 10/13/16.

Docket Numbers: ER16–2650–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Tariff Cancellation: Notice of cancellation SA 1951 between NYISO, NMPC and NYPA to be effective 11/22/2016.

Filed Date: 9/22/16.

Accession Number: 20160922–5168.

Comments Due: 5 p.m. ET 10/13/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–55–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Application of Consolidated Edison Company of New York, Inc. for an order pursuant to Section 204 of the Federal Power Act.

Filed Date: 9/21/16.

Accession Number: 20160921–5184.

Comments Due: 5 p.m. ET 10/12/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 22, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23444 Filed 9–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–155–000.

Applicants: FL Solar 1, LLC.

Description: FL Solar 1, LLC. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/21/16.

Accession Number: 20160921–5127.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: EG16–156–000.

Applicants: AL Solar A, LLC.

Description: AL Solar A, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/21/16.

Accession Number: 20160921–5128.

Comments Due: 5 p.m. ET 10/12/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2562–001.

Applicants: Nicolis, LLC.

Description: Tariff Amendment: Amendment to Co Tenancy Agreement to be effective 9/6/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5053.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2563–001.

Applicants: Nicolis, LLC.

Description: Tariff Amendment: Amendment to Shared Use Agreement to be effective 9/6/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5052.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2564–001.

Applicants: Tropico, LLC.

Description: Tariff Amendment: Amendment to Shared Use Agreement to be effective 9/6/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5055.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2565–001.

Applicants: Tropico, LLC.

Description: Tariff Amendment: Amendment to Co Tenancy Agreement to be effective 9/6/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5058.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2631–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 27—Annual BPA–GTA Update 2016 to be effective 10/31/2016.

Filed Date: 9/20/16.

Accession Number: 20160920–5139.

Comments Due: 5 p.m. ET 10/11/16.

Docket Numbers: ER16–2632–000.

Applicants: Trans Bay Cable LLC.

Description: § 205(d) Rate Filing: Revisions to Appendix I of TO Tariff to be effective 11/23/2016.

Filed Date: 9/20/16.

Accession Number: 20160920–5140.

Comments Due: 5 p.m. ET 10/11/16.

Docket Numbers: ER16–2633–000.

Applicants: Westar Energy, Inc.

Description: Tariff Cancellation: Notice of Cancellation of certain designated Rate Schedules to be effective 1/1/2014.

Filed Date: 9/21/16.

Accession Number: 20160921–5000.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2634–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3247 AEM Wind/SPS Facilities Construction Agreement to be effective 9/12/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5025.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2635–000.

Applicants: Entergy Louisiana, LLC.

Description: Request for Waiver of Entergy Louisiana, LLC.

Filed Date: 9/20/16.

Accession Number: 20160920–5161.

Comments Due: 5 p.m. ET 10/11/16.

Docket Numbers: ER16–2636–000.

Applicants: Inland Empire Energy Center, LLC.

Description: § 205(d) Rate Filing: Request for Category 1 Seller Status to be effective 9/22/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5051.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2637–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Modifications to NITSA/NOA between PNM and Tri-State to be effective 9/1/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5086.

Comments Due: 5 p.m. ET 10/12/16.

Docket Numbers: ER16–2638–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4540, Queue Position NQ132 to be effective 8/22/2016.

Filed Date: 9/21/16.

Accession Number: 20160921–5136.

Comments Due: 5 p.m. ET 10/12/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23445 Filed 9–27–16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–21–000]

Modifications to Commission Requirements for Review of Transactions Under Section 203 of the Federal Power Act and Market-Based Rate Applications Under Section 205 of the Federal Power Act

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks to explore whether, and if so, how, the Commission should revise its current approach to identifying and assessing market power in the context of transactions under section 203 of the Federal Power Act (FPA) and applications under section 205 of the FPA for market-based rate authority for wholesale sales of electric energy, capacity and ancillary services by public utilities. In addition, the Commission seeks comment related to its scope of review under section 203 of the FPA, including revisions to blanket authorizations.

DATES: Comments are due November 28, 2016.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Melissa Nimit (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (202) 502–6638

Amery Poré (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (202) 502–6312

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry (NOI), the Commission seeks to explore whether, and if so, how, the Commission should revise its current approach to identifying and assessing market power in the context of transactions under section 203 of the Federal Power Act (FPA)[1] and applications under section 205 of the FPA[2] for market-based rate authority for wholesale sales of electric energy, capacity and ancillary services by public utilities. In addition, the Commission seeks comment related to its scope of review under section 203 of the FPA, including revisions to blanket authorizations. Of particular interest is whether the Commission should: (1) Establish a simplified analysis for certain section 203 transactions that are unlikely to raise market power concerns; (2) add a supply curve analysis to section 203 evaluations; (3) improve the Commission's single pivotal supplier analysis in reviewing market-based rate applications, and add a similar pivotal supplier analysis to section 203 evaluations; (4) add a market share analysis to review of section 203 transactions; (5) modify how capacity associated with long-term power purchase agreements (PPAs) should be attributed in section 203 transactions; and (6) require submission of applicant merger-related documents. In addition, the Commission seeks comment related to its scope of review under section 203, including whether there are existing blanket authorizations that may be overly broad or otherwise no longer appropriate, and whether there are classes of transactions for which further blanket authorizations or form of expedited review would be appropriate.

I. Background

A. Section 203

2. Section 203(a)(4) of the FPA requires the Commission to approve a proposed disposition, consolidation, acquisition, or change in control if it finds that the proposed transaction will be consistent with the public interest.[3] The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) The effect on competition; (2) the effect on rates; and (3) the effect on regulation.[4]

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[1] 16 U.S.C. 824b.

[2] 16 U.S.C. 824d.

[3] 16 U.S.C. 824b(a)(4).

[4] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (1996 Merger Policy Statement),

Continued

The Energy Policy Act of 2005 added the requirement that the Commission find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest." [5]

3. To analyze whether a proposed transaction will have an adverse effect on competition, the Commission adopted the 1992 Department of Justice (DOJ) and Federal Trade Commission (FTC) Horizontal Merger Guidelines (1992 Guidelines) [6] and its five-step framework,[7] as well as an analytic screen (Competitive Analysis Screen), based on the 1992 Guidelines, to identify transactions that would not harm competition.[8] The components of the Competitive Analysis Screen are as follows: (1) Identify the relevant products; (2) for the purpose of determining the size of the geographic market, identify customers who may be affected by the merger; (3) for the purpose of determining the size of the geographic market, identify potential suppliers to each identified customer (which includes a delivered price test analysis, consideration of transmission capability, and a check against actual trade data); and (4) analyze market concentration using the Herfindahl-Hirschman Index (HHI) thresholds from the 1992 Guidelines.[9]

4. There are two ways that an applicant may demonstrate that the proposed transaction will not have an adverse effect on competition. First, the applicant may explain how the transaction does not result in any increase in the amount of generation capacity owned or controlled collectively by it and its affiliates in the relevant geographic markets.[10] Second, an applicant may explain how the transaction results in a *de minimis* change in its market power.[11] An applicant that is not able to rely on either of the above is required to submit a Competitive Analysis Screen, which includes a delivered price test.[12]

5. Although the Commission's regulations require applicants to "[i]dentify and define all wholesale electricity products sold by the merging entities during the two years prior to the date of the application, including, but not limited to, non-firm energy, short-term capacity (or firm energy), long-term capacity (a contractual commitment of more than one year), and ancillary services (specifically spinning reserves, non-spinning reserves, and imbalance energy, identified and defined separately)," [13] the delivered price tests analyses filed with the Commission often focus on only the short-term energy market, with far less detail and attention given to the other relevant products.

6. The delivered price test primarily determines the scope, or size, of the relevant geographic market by identifying potential suppliers, incorporating transmission availability and prices, and determining the effects of a transaction on concentration.[14] The Commission first adopted the delivered price test in 1996 for section 203 filings as part of its response to "dramatic and continuing changes in the electric power industry" to "ensure that future mergers are consistent with the competitive goals of the Energy Policy Act of 1992 (EPAct)." [15] Subsequent case law and policy statements have provided further guidance but have not materially modified the delivered price test.

B. Section 205

7. Section 205 of the FPA requires that all rates charged by public utilities for the interstate transmission or sale of electric energy be just and reasonable and not unduly discriminatory or preferential.[16] The Commission allows sales of electric energy, capacity, and ancillary services at market-based rates if the applicant and its affiliates show that they do not have, or have adequately mitigated, horizontal and vertical market power.[17] The Commission adopted two indicative screens, the wholesale market share screen and the pivotal supplier screen, for purposes of determining whether a seller may be granted market-based rate authority.

8. The wholesale market share screen measures whether a seller has a dominant position in the market by analyzing the number of megawatts (MW) of uncommitted capacity it owns or controls, relative to the uncommitted capacity of the entire market.[18] A seller whose share of the relevant market is less than 20 percent during all seasons passes the market share screen.[19] The Commission stated that the use of such a conservative threshold at the indicative screen stage of a proceeding is warranted because the indicative screens are meant to identify those sellers that raise no horizontal market power concerns, as well as those that

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reconsideration denied, Order No. 592–A, 79 FERC ¶ 61,321 (1997). *See also FPA Section 203 Supplemental Policy Statement,* FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration,* 122 FERC ¶ 61,157 (2008).

[5] Energy Policy Act of 2005, Public Law 109–58, 1289, 119 Stat. 594, 982–83 (2005) (EPAct 2005).

[6] *1992 Horizontal Merger Guidelines,* 57 FR 41552 (Apr. 2, 1992) (1992 Guidelines).

[7] 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,118. The five steps are: (1) Defining the markets; (2) evaluating whether the extent of concentration of the market raise concerns about potential adverse competitive effects; (3) assessing whether entry could counteract such concerns; (4) assessing any efficiency gains that cannot otherwise be gauged; and (5) assessing whether either party to the merger would fail without the merger, causing its assets to exit the market.

[8] We note that in 2010, the DOJ and FTC again issued Horizontal Merger Guidelines (2010 Guidelines), which replaced the 1992 Guidelines and explained several changes to the analysis set forth in the 1992 Guidelines. Specifically, among other things, the 2010 Guidelines (1) raise the HHI thresholds used to classify a market as unconcentrated, moderately concentrated, or highly concentrated; and (2) place less emphasis on market definition and the use of a prescribed formula for considering the effects of a merger. The Commission sought comment on whether the Commission should revise its approach for examining horizontal market power when analyzing proposed mergers or other transactions under section 203 of the FPA and when analyzing market-based rate filings under section 205 of the FPA to reflect the 2010 Guidelines. However, the Commission ultimately decided to retain its existing approaches to analyzing horizontal market power under section 203 of the FPA and in its analysis of electric market-based rates under section 205 of the FPA. *Analysis of Horizontal Market Power under the Federal Power Act,* 138 FERC ¶ 61,109 (2012).

[9] *Id.* at 30,119–20, 30,128–37. Specifically, the 1992 Guidelines address three ranges of market concentration: (1) An unconcentrated post-merger market—if the post-merger HHI is below 1000, regardless of the change in HHI the merger is unlikely to have adverse competitive effects; (2) a moderately concentrated post-merger market—if the post-merger HHI ranges from 1000 to 1800 and the change in HHI is greater than 100, the merger potentially raises significant competitive concerns; and (3) a highly concentrated post-merger market—if the post-merger HHI exceeds 1800 and the change in the HHI exceeds 50, the merger potentially raises significant competitive concerns; if the change in HHI exceeds 100, it is presumed that the merger is likely to create or enhance market power.

[10] 18 CFR 33.3(a)(2).

[11] *Id.*

[12] 18 CFR 33.3(a)(1).

[13] 18 CFR 33.3(c)(1).

[14] *See* 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,118–19.

[15] *Id.* at 30,110–11.

[16] 16 U.S.C. 824d(a).

[17] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 1, 4, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[18] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 43.

[19] *Id.* PP 43–44, 80, 89.

require further examination.[20] The Commission reasoned that a 20 percent threshold for the wholesale market share screen achieved the proper balance between identifying sellers that may present market power concerns, while avoiding the risk of "false positives" and imposing undue regulatory burdens on sellers.[21]

9. The pivotal supplier screen evaluates the seller's potential to exercise market power based on the seller's uncommitted capacity at the time of annual peak demand in the relevant market.[22] Sellers are required to identify the wholesale load, which is calculated by taking the difference between the annual peak load and the average of the daily native load peaks during the month in which the annual peak occurs. The pivotal supplier analysis deducts the wholesale load from the total uncommitted supply in the market to calculate the net uncommitted supply available to compete at wholesale. A seller satisfies the pivotal supplier screen if wholesale load is less than uncommitted capacity from the seller's competing suppliers in the relevant market (wholesale load can be served without any of the seller's capacity participating in the market).

10. With respect to sales of energy, capacity, energy imbalance service, generation imbalance service, and primary frequency response service, the Commission has established rebuttable presumptions that a seller lacks market power if the screens above are passed. In addition, there is a rebuttable presumption that a seller lacks market power in the provision of operating reserve services if the seller passes the above screens and makes an additional showing that the scheduling practices in its region supports the delivery of operating reserve resources from one balancing authority area to another. For each of these products, a seller is rebuttably presumed to have market power if it does not pass one of the screens.[23]

II. Request for Comments

11. As part of ensuring that the Commission meets its statutory obligations, the Commission, on occasion, engages in public inquiry to gauge whether there is a need to add, modify or eliminate certain requirements. Here, the Commission is interested in obtaining comment on harmonizing its analysis of transactions under section 203 and its market-based rate analysis under section 205, streamlining the process for certain applicants that submit section 203 filings, and obtaining additional information from applicants that may help better inform the Commission's analyses. Specifically, the Commission is undertaking a review of its approach to identifying and assessing market power in the context of both its review of transactions under section 203 and applications under section 205 for market-based rate authority and whether the Commission's analyses of market power under section 203 and of market-based rate applications are effective at identifying the potential for the exercise of market power, and if not, what improvements can be made. The Commission has identified several potential improvements in how it analyzes section 203 and market-based rate applications on which it seeks comment, which include harmonizing the Commission's analysis of transactions under section 203 and its market-based rate analysis under section 205, considering additional information in the Commission's market power analysis (such as a supply curve analysis, pivotal supplier analysis, market share analysis, and applicant merger-related documents), and potentially clarifying what would qualify as a *de minimus* transaction in section 203 filings. The Commission notes there are a number of areas where the Commission's section 203 and market-based rate market power analyses differ.[24] Some of these differences are appropriate, but others may not be. Thus, in considering whether and how to implement any changes to the market power analyses in the Commission's review of section 203 transactions and market-based rate applications, the Commission is interested in whether increased harmonization of the two analyses is warranted and feasible. The Commission also seeks comment on whether several additional types of analyses that have not been required previously could aid the Commission's review of a proposed transaction.

12. As described below, the Commission seeks comment on whether, and if so, how, the Commission should revise its approach for examining horizontal market power in transactions under sections 203 and 205 for wholesale sales of electric energy, capacity and ancillary services by public utilities in six specific areas: (1) Whether, and if so, how, to more precisely define *de minimis* in the context of the section 203 effect on competition prong and whether to develop a specific test for determining when a proposed transaction meets that definition such that a full Competitive Analysis Screen is unnecessary; (2) whether to add a requirement that applicants provide a supply curve analysis for their effect on competition demonstration under section 203; (3) whether there is a need for modifications to the Commission's existing pivotal supplier analysis in reviewing a market-based rate application and whether adding a pivotal supplier analysis to an applicant's effect on competition demonstration under section 203 would help detect market power issues; (4) whether adding a market share analysis to an applicant's effect on competition demonstration under section 203 would help detect market power issues; (5) whether to specify how capacity covered by a long-term firm PPA should be attributed in the section 203 Competitive Analysis Screen; and (6) whether to adopt a requirement for section 203 applicants to submit certain merger-related documents. In addition, the Commission seeks comment on several additional questions regarding the section 203 analysis beyond market power issues related to its scope of review, including whether there are existing blanket authorizations under section 203 that may be overly-broad or otherwise no longer appropriate, and whether there are classes of transactions for which further blanket authorizations or form of expedited review would be appropriate.

A. Simplified De Minimis Analysis

13. The Commission seeks comment on whether, and if so, how, to more precisely define *de minimis* in the context of reviewing a section 203 application. The Commission seeks comment on whether a threshold is appropriate to determine whether a transaction's impact can be determined to be *de minimis,* and if so, how that threshold should be calculated.

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[20] *Id.* PP 13, 62. Sellers are allowed to use simplifying assumptions in preparing their indicative screens, such as not considering competing imports into the relevant market. Additionally, sellers may be excused from filing screens if, for instance, they represent that the full output of all of the capacity they and their affiliates own in the relevant market and all first-tier markets is fully committed under long-term contracts to unaffiliated entities.

[21] *Id.* P 91.

[22] *Id.* P 35.

[23] 18 CFR 35.37.

[24] For example, the Commission recently addressed the question of the appropriate analysis for ancillary services in the section 205 market-based rate context, but did not make any corresponding finding in the section 203 context. Nonetheless, we seek comment broadly in this NOI. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for Electric Storage Technologies,* Order No. 784, FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification,* Order No. 784–A, 146 FERC ¶ 61,114 (2014).

14. Commission regulations require a Competitive Analysis Screen, which includes a delivered price test, for section 203 applications that involve an impact on horizontal competition. A Competitive Analysis Screen is not needed if the applicant affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic market or that the extent of business transactions among the merging entities in the same geographic market is *de minimis,* and no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.[25]

15. The Commission has not defined *de minimis* nor identified a threshold that it would consider sufficient to meet this requirement, but has accepted various representations made by applicants regarding the issue. Applicants often make representations that their transaction's effect on horizontal competition is *de minimis* because their combined share of post-transaction installed capacity in the relevant geographic market will be relatively small. In other cases, applicants have claimed that their transaction's effect on horizontal competition is *de minimis* even where an applicant's post-transaction market share is large but the increase in an applicant's post-transaction installed capacity is relatively small. Additionally, some applicants have provided a simplistic calculation to demonstrate the change in HHI, based on the installed capacity of the parties to the transaction compared to the market size, referred to as a "2ab analysis." The "2ab analysis" is used to demonstrate that the overlap is *de minimis* and thus a delivered price test is not needed.

16. In light of the various representations made by applicants regarding whether a proposed transaction's effect on horizontal competition is *de minimis,* the Commission seeks comment on whether it should establish a specific threshold to determine whether a transaction's impact can be determined to be *de minimis* and, if so, how that threshold should be calculated. The following are possible preliminary steps that a *de minimis* analysis could include to arrive at a market share: (1) Identify the default relevant geographic market as the balancing authority area (BAA) or regional transmission organization/independent system operator (RTO/ISO) market (or submarket, if known or appropriate); (2) identify the default product market as installed capacity, or identify the actual transactions in the relevant geographic market; and (3) calculate the existing (*i.e.,* pre-transaction) market shares of the two transacting parties in the default relevant geographic market, where the results of that calculation would be measured against a specific threshold, such that if the product of the pre-transaction market shares is less than the threshold, the Commission would not require a full Competitive Analysis Screen. The Commission seeks comment both on this method as well as on alternative methods for determining whether a proposed transaction's effect on horizontal competition is *de minimis,* and on what an appropriate specific threshold may be.

17. Further, as explained above, while some applicants have contended that their section 203 transaction would only have a *de minimis* effect on horizontal competition, applicants have also argued that they either do not need to provide a market power study or, alternatively, that the "2ab analysis" sufficiently demonstrates the transaction does not impact horizontal market power. The Commission seeks comments regarding whether the "2ab analysis" may lead to false results in situations where the proposed transaction is a partial acquisition of a competitor in the same market. The majority of section 203 applications where the applicants' market presence overlaps are for partial acquisitions. In instances where both entities will continue to exist post-merger—albeit with different portfolios of assets—relying on the algebraically simple "2ab analysis" may be inappropriate because the resulting market shares of the post-transaction competitors have changed and therefore the squared market shares caused by the transaction do not produce the same mathematical result as when two firms merge.

18. Thus, the Commission seeks comment on whether it should continue to accept the use of the current "2ab analysis," whether the "2ab analysis" is useful for some types of transactions but not others, or whether the Commission should develop an alternative abbreviated test to assess whether a transaction would result in an adverse effect on horizontal competition.

B. Serial De Minimis Mergers

19. Serial acquisitions have the potential to result in an applicant with a larger market share incrementally acquiring additional capacity such that each proposed transaction individually would not require a full Competitive Analysis Screen, but taken as a whole would require a more in depth examination. That is, a particular entity could be a serial acquirer and amass market power from a number of small incremental transactions. As such, the Commission requests comment on whether it should incorporate consideration of incremental acquisitions into its competition analysis as well as into its analysis of whether a proposed transaction is *de minimis.* The Commission also seeks comment on alternative methods for determining how to address incremental acquisitions.[26]

C. Supply Curve Analysis

20. The Commission also seeks comment on whether the existing section 203 horizontal market power analysis could be strengthened by incorporating a supply curve analysis. A supply curve analysis overlays a demand curve and a supply curve in order to assess whether a merged company has the ability and incentive to exercise market power by withholding output from marginal units (*i.e.,* ability units) to raise prices in order to benefit its baseload units (*i.e.,* incentive units) and increase its total profits.[27] The supply curve is constructed using generation dispatch costs from the market.[28] The ability to withhold output depends on the amount of marginal capacity that would be controlled by the merged firm, and the incentive to withhold output depends on the amount of inframarginal capacity that could benefit from higher prices. In contrast, the delivered price test examines aggregate MW of capacity in the relevant geographic area(s), not the structure of capacity (*i.e.,* not the number of units in the baseload, intermediate, and peaking segments by ownership). A supply curve analysis can be used to calculate the responsiveness of prices to a reduction in supply for the market price calculated for each season/load, and establish a threshold that indicates the market may be subject to price movement through unilateral action. The results of this analysis could

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[25] 18 CFR 33.3(a).

[26] Below, the Commission asks questions about whether it should be concerned about incremental acquisitions of generating capacity that cumulatively over time could lead to market power, but where no individual transaction raised a competitive concern. This concern is sometimes referred to as the "serial merger theory."

[27] A supply curve analysis considers the relevant portion of the market supply curve elasticity for most hours of the year which provides information regarding applicants' incentive to withhold output. *See, e.g., Commonwealth Edison Co.,* 91 FERC ¶ 61,036, at 61,133 n.42 (2000).

[28] A properly constructed delivered price test incorporates the dispatch costs for the available generation in the market.

indicate that an entity may have both the ability and incentive to raise the market price. In addition, a supply curve analysis would enable the Commission to identify situations that typical HHI analyses do not capture, including situations where mergers that result in changes in market concentration below the thresholds that merit further scrutiny from an HHI perspective may still have the ability and incentive to raise prices above competitive levels.

21. Currently, a supply curve analysis is not explicitly required by the Commission's regulations although it can be submitted by some applicants as alternative evidence.[29] The Commission requests comment on whether requiring a supply curve analysis for each section 203 application that must submit a Competitive Analysis Screen, in addition to current components of the Competitive Analysis Screen, would strengthen the horizontal market power analysis. If so, the Commission seeks comment as to what information it should require and what metrics it should evaluate, as part of such supply curve analysis.

D. Pivotal Supplier Analysis

22. The Commission uses a pivotal supplier analysis as an indicative screen and for the delivered price test aspect of its assessment of whether an applicant seeking market-based rate authority under FPA section 205 has market power. The Commission is interested in receiving comment on its current use of the pivotal supplier test in the context of market-based rates, whether adding a pivotal supplier test in the Commission's FPA section 203 analysis would provide valuable information to assess whether a party to the transaction is pivotal prior to the transaction, whether the transaction would render the party pivotal, and whether the degree to which a party to the transaction is pivotal is enhanced by the transaction.

23. Specifically, the Commission requests comment on whether the current pivotal supplier analysis applied in market-based rate cases works effectively for purposes of analyzing market power and whether any improvements may be made to the current analysis. In particular, the Commission seeks comment on whether the wholesale load proxy is an effective metric in examining whether a supplier is pivotal in the study area. The wholesale load proxy used in the current pivotal supplier analysis uses the study area's annual peak load (*i.e.*, needle peak) less the proxy for native load obligation (*i.e.*, the average of the daily peak native load during the month in which the annual peak load day occurs).

24. The Commission notes that, in practice, market-based rate sellers rarely fail the pivotal supplier screen. In many cases, the results of the pivotal supplier analysis indicate that the study area's wholesale load can be met solely by remote suppliers, a result that is unlikely in practice. Moreover, the Commission intended that the indicative screens would serve as a conservative threshold.[30] However, with experience this does not seem to be the case. Thus, the Commission requests comment on whether modifying the existing pivotal supplier analysis by replacing the current wholesale load proxy with the study area's annual peak load (*i.e.*, peak load not reduced by the proxy for native load obligation) would improve the accuracy and usefulness of the indicative screen and whether such a modification would result in a more realistic analysis of whether a supplier is pivotal. The Commission welcomes additional comments on the use of and modifications to pivotal supplier screens in the context of the Commissions' review of an applicant's request for market-based rate authorizations.

25. The Commission also notes that using a more conservative screen such as the study area's peak load may trigger "false positives" that put additional burdens on sellers to rebut the presumption of market power and require additional analysis. As a result, the Commission seeks comment on the magnitude of the additional burden and whether that burden is outweighed by the benefits of adopting a modified pivotal supplier screen to provide a more accurate analysis.

26. As noted above, the Commission is interested in the use of an appropriately constructed pivotal supplier screen in the context of its review of applications under FPA section 203. The Commission seeks comment on whether adding a pivotal supplier analysis to its review of a section 203 application would enhance the Commission's analysis of section 203 transactions. Because the Commission's review of a section 203 application focuses on whether a proposed transaction will have an adverse effect on competition rather than whether there is a dominant market participant, the Commission also requests comment on whether a pivotal supplier analysis for a section 203 application should be different from that used for the Commission's review of a market-based rate application, and if so, how it should be adjusted. While pivotal supplier tests are usually applied to analysis of energy-only markets, the Commission notes that these analyses could be applied to capacity and ancillary service markets in both the sections 203 and 205 contexts. Adding a pivotal supplier test to the Commission's review of a section 203 application could make the Commission's analysis more effective because it would take into account the ability to meet demand, in addition to supply conditions, in screening for potential market power. While the available economic capacity measure[31] in the delivered price test deducts for native load obligations, market conditions may be such that the residual supply is many times greater than any market demand outside of native load obligations. Conversely, in more concentrated markets, a pivotal supplier analysis provides important information about the ability to exercise market power because small changes in supply could lead to large changes in price. For example, adjustments could include a determination of whether a transaction would create a pivotal supplier where there was none or whether an existing pivotal supplier is pivotal in a greater number of hours. This information may help to answer questions from a slightly different perspective than pure market concentration analysis as measured by the delivered price test, such as how a transaction would result in an increase of market power or whether market demand is low enough as compared to existing supply such that a large HHI change does not necessarily create the ability to withhold output and competing supply can serve the peak load.

27. Finally, the Commission seeks comments on how to interpret the results if it incorporates a pivotal supplier analysis into its section 203 analysis. In particular, should the Commission factor into its determination whether a proposed transaction causes an applicant to become pivotal? If the applicant is

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[29] In Order No. 642, the Commission clarified that applicants with screen failures could address market conditions beyond the change in HHI "such as [with an analysis of] demand and supply elasticity, ease of entry and market rules, as well as technical conditions, such as the types of generation involved." *Revised Filing Requirements Under Part 33 of the Commission's Regulations,* Order No. 642, FERC Stats. & Regs. ¶ 31,111, at 31,897 (2000), *order on reh'g,* Order No. 642–A, 94 FERC ¶ 61,289 (2001).

[30] *See generally* Order No. 697, FERC Stats. & Regs. ¶ 31,252.

[31] 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,132.

already pivotal, should the Commission require mitigation to alleviate any enhancement in an applicant's status as a pivotal supplier that results from the transaction?

E. Market Share Analysis

28. The Commission's section 203 analysis focuses primarily on changes in market concentration arising from a proposed transaction.[32] The Commission's section 203 analysis is a forward-looking analysis of the effect of the proposed transaction, and it focuses largely on concentration of the market and not an examination of market share changes or accumulation of market share over time. As a consequence, the section 203 analysis may not include complete information about an applicant's overall presence in a market. Therefore, the Commission seeks comment on the potential benefits of expanding its section 203 analysis to include an examination of market share.

29. Unlike the pivotal supplier analysis, discussed above, that focuses on the size of the applicant relative to the maximum capacity needed to serve load, a market share analysis focuses on the size of the applicant relative to all other suppliers in the market.[33] An overall market share screen in the section 203 context would enable the Commission to determine if a seller has obtained a significant share in a specific market either through a series of transactions or a combination of transactions and construction, allowing for the accumulation of market power without one particular transaction triggering concerns. The Commission seeks comment on whether there is a specific market share above which market power concerns would arise in a section 203 review. For example, in evaluating applications for market-based rate authority, the Commission applies a 20 percent market share threshold in determining whether an application raises market power concerns.[34] The Commission seeks comment on whether a market share threshold is appropriate in its review of section 203 applications and, if so, what that threshold should be. The Commission seeks further comment on whether market share analyses should be applied to capacity and ancillary service markets, in addition to energy markets.

30. The Commission also seeks comment on whether the market share threshold, or an alternative analysis, would adequately address concerns that an entity has accumulated a dominant position in a market over time through a series of acquisitions, *i.e.*, the serial merger theory. Such an alternative analysis could consider changes in market concentration resulting from an entity's past mergers and acquisitions over a certain time period. For example, the Commission could establish a threshold where, if an entity proposes to acquire another entity (or its generation assets) and that acquiring entity has made other acquisitions that have cumulatively increased its market share by 10 percent or more over the previous five years, the newest acquisition would not be considered *de minimis* and would require a complete horizontal competitive analysis.

F. Capacity Associated With Power Purchase Agreements

31. The Commission is interested in whether it should alter the way in which it accounts for capacity associated with long-term firm PPAs[35] in the Commission's review of a section 203 application. Currently, if a purchasing utility entered into a long-term firm PPA for the output of a generating facility before filing a section 203 application to acquire that same facility, the Commission has generally considered the generation capacity of that facility to be attributed to the purchasing utility's pre-acquisition market share. Because the capacity of the facility is already attributed to the purchaser, the acquisition of the facility will not increase the purchaser's market share under the Commission's screens. Therefore, the transaction would be considered to have no adverse effect on competition.[36]

32. While the current approach of attributing the capacity of the facility to the purchaser is appropriate in the context of the market-based rate market power analysis, in the section 203 context the change in market concentration may extend beyond the terms of the PPA. For example, if a transaction conveys ownership over a generation facility where a PPA is expiring in two years, the transaction may prevent competitive supply from reentering the market. In the Commission's review of a section 203 application, the impact of a proposed transaction on horizontal competition is assessed when the section 203 filing is made seeking authorization of the acquisition. However, a market power analysis is not conducted upon the expiration of the contract. The Commission seeks comment on whether it should use alternative methodologies in its review of a section 203 application to account for the capacity associated with long-term firm PPAs to increase the accuracy of its market power analyses with respect to such PPAs. For example, where a section 203 applicant seeks approval to purchase a generating facility from which it already purchases the output under a long-term firm PPA, that applicant could be asked to provide a delivered price test analysis showing the HHI impacts under two different scenarios: (1) With the capacity attributed solely to the current facility owner; and (2) with the capacity attributed solely to the applicant proposing to acquire the facility. Alternatively, the Commission could attribute a facility's capacity to the facility owner only under certain circumstances, including: (1) If the term of the PPA began one year or less prior to the filing of the section 203 application; (2) if the PPA expires prior to the end of the study period used in the applicant's delivered price test analysis;[37] or (3) if the facility is external to the purchaser's BAA but does not have firm transmission service to the purchaser's BAA. Applicants with long-term firm PPAs could also be required to justify in a detailed manner why the capacity in question should be attributed to the facility purchaser. The Commission seeks comments on these proposals.

G. Applicant Merger-Related Documents

33. As part of the Commission's assessment regarding whether we should revise aspects of our review of section 203 applications, the Commission requests comment on whether, for transactions that require a full Competitive Analysis Screen, it

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[32] *Tucson Elec. Power Co.*, 149 FERC ¶ 61,056, at P 30 (2014) (the Commission will consider evidence of anticompetitive effects other than increases in HHI).

[33] The Commission's existing delivered price test analysis requirement in the implementing regulations of the FPA section 203 program incorporate individual market shares; therefore, we believe market share information is readily available for most applicants to be able to complete a market share analysis.

[34] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 89–93.

[35] The Commission has defined a long-term PPA to be one that has a contract term of one year or longer. *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 80 FR 67056 (Oct. 30, 2015), FERC Stats. & Regs. ¶ 31,374, at P 143 (2015), *order on reh'g and clarification*, Order No. 816–A, FERC Stats. & Regs. ¶ 31,382 (2016).

[36] The Commission recently clarified that market-based rate applications must attribute a long-term firm PPA to the purchaser when the PPA has an associated long-term transmission reservation. Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 138.

[37] Merger analysis should be as forward looking as practicable, typically a delivered price test will study projected market conditions on a forward-looking basis after the proposed transaction is expected to close. *See* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,887.

should require the submission of additional documentation that may assist the Commission's review of certain proposed transactions. Specifically, the Commission understands that applicants submit to DOJ and/or FTC consultant reports and other internal reports that assess the competitive effects of the merger. The Commission seeks comment regarding whether the Commission should require applicants to submit as part of their section 203 application these consultant reports and internal reports (merger-related documents) required by DOJ and/or FTC. The Commission would continue to rely on the Competitive Analysis Screen to make its determination, but we believe these merger-related documents could be useful in the Commission's understanding of an applicant's Competitive Analysis Screen by providing additional information regarding, for example, the relevant geographic market definition or anticipated unit retirements.

34. We recognize that imposing a new requirement regarding the submission of such merger-related documents could impose a burden on applicants or raise other concerns. However, we do not anticipate that the burden of requiring submission of these merger-related documents would be significant because applicants already are required to submit such documents to other federal governmental agencies reviewing the competitive effects of the proposed transaction. In addition, we recognize that there could be concerns regarding the commercially sensitive nature of these merger-related documents, and how such documents would be protected once submitted to the Commission. The Commission seeks comments on this proposal, including the likely costs and benefits of including the merger-related documents in its processing of section 203 applications and the confidentiality concerns that this proposal may raise.

H. Blanket Authorizations

35. EPAct 2005[38] revised the scope of transactions subject to the Commission's review under section 203. Among other things, the amended section 203 codified the Commission's review authority to include authority over certain holding company mergers and acquisitions,[39] as well as certain public utility acquisitions of generating facilities.[40] In Order No. 669,[41] the Commission promulgated regulations adopting certain modifications to 18 CFR part 33 and section 2.26 to implement the amended section 203 and, in so doing, granted blanket authorizations for certain types of transactions, including foreign utility acquisitions by holding companies, intra-holding company system financing and cash management arrangements, certain internal corporate reorganizations, and certain investments in transmitting utilities and electric utility companies. Under these blanket authorizations, even though the transaction may be jurisdictional under section 203, no application or prior Commission authorization is needed prior to completing the transaction although some have reporting requirements and other conditions.[42]

36. In Order No. 708,[43] the Commission established five additional blanket authorizations. Four of these blanket authorizations apply to transactions in which a public utility seeks to transfer its outstanding voting securities to another holding company that has already been granted blanket authorization under various provisions of section 33.1(c).[44] The fifth blanket authorization applies to the acquisition or disposition of a jurisdictional contract where: (1) Neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities; (2) the contract does not convey control over the operation of a generation or transmission facility; (3) the parties to the transaction are neither affiliates nor associate companies; and (4) the acquirer is a public utility.[45]

37. As discussed above, since these blanket authorizations were granted, industry has undergone substantial change including continued market development and expansion of RTOs/ISOs, consolidation among utilities, such that the conditions that gave rise to the blanket authorizations currently in effect may no longer be appropriate. For example, it may no longer be appropriate to grant blanket authorizations to holding companies that only hold exempt wholesale generators, as is granted in 18 CFR 33.1(c)(8), as exempt wholesale generators now make up a significant portion of supply and any transaction involving these generators could affect wholesale rates by impacting competition. In light of these changes and others, the Commission seeks comment on whether there are existing blanket authorizations under section 203 that are no longer appropriate.

38. Industry change has also led to an evolution in the types of transactions that are submitted to the Commission for section 203 approval but which may not give rise to the competitive concerns considered when analyzing whether a transaction is consistent with the public interest. Such transactions include the disposition of securities with limited rights to governance of the public utility, as well as transfers of pieces of the transmission system that are consolidated into the existing transmission network of a public utility. Many applications submitted under section 203 present no concerns and are found to be consistent with the public interest and are approved by the Commission without condition. The Commission seeks comment on whether there are classes of transactions that share characteristics for which further blanket authorizations would be appropriate, and whether specific reporting requirements would also be appropriate in certain cases.

I. Transactions Subject to Only Section 203(a)(1)(B)

39. As discussed above, in EPAct 2005, Congress revised the scope of the Commission's jurisdiction under section 203. For certain types of transactions, Congress established a "minimum threshold" of $10 million for requiring Commission approval.[46] In contrast, under section 203(a)(1)(B) a public utility requires Commission authorization before it "merge[s] or consolidate[s], directly or indirectly" its jurisdictional facilities with those of another person with no minimum dollar threshold. Based on the plain language of the statute, the Commission has not established a minimum threshold for transactions under section 203(a)(1)(B).[47] Accordingly, there are

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[38] EPAct 2005, Public Law 109–58, 1289, 119 Stat. 594, 982–83.

[39] 16 U.S.C. 824b(a)(2).

[40] 16 U.S.C. 824b(a)(1)(D).

[41] *Transactions Subject to FPA Section 203,* Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g,* Order No. 669–A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g,* Order No. 669–B, FERC Stats. & Regs. ¶ 31,225 (2006).

[42] *See* 18 CFR 33.1(c)(1)(i)–(ii), (c)(2), (c)(5), (c)(10), (c)(12).

[43] *Blanket Authorization Under FPA Section 203,* Order No. 708, FERC Stats. & Regs. ¶ 31,265, *order on reh'g,* Order No. 708–A, FERC Stats. & Regs. ¶ 31,273 (2008), *order on reh'g,* Order No. 708–B, FERC Stats. & Regs. ¶ 31,290 (2009).

[44] 18 CFR 33.1(c)(12)–(15).

[45] 18 CFR 33.1(c)(16).

[46] 16 U.S.C. 824b(a)(1)(A), (C), (D).

[47] In Order No. 669, the Commission stated:

> While Congress included a $10 million threshold for amended subsections 203(a)(1)(A), (C), (D), and 203(a)(2) (dispositions of jurisdictional facilities; acquisitions of securities of public utilities; purchase of existing generation facilities; holding company acquisitions), Congress clearly did not

Continued

scenarios in which transfers of low-value equipment require Commission review. These transactions account for a large percentage of the section 203 filings submitted to the Commission,[48] and many of them do not raise concerns under the Commission's public interest analysis.

40. As noted above, the Commission has granted blanket authorizations for certain jurisdictional transactions. The Commission believes there may be certain other categories of transactions for which abbreviated filing requirements may be appropriate. Thus, the Commission seeks comment on whether there are categories of proposed transactions that are jurisdictional only under section 203(a)(1)(B) that, by their nature, do not require the same level of scrutiny by the Commission. One such category of proposed transactions could include those below a minimum dollar threshold. Such a threshold would be distinct from the threshold for the Commission to review a section 203 transaction, and would establish a benchmark for identifying transactions under section 203(a)(1)(B) that are jurisdictional but that would not require the same level of scrutiny by the Commission.

41. If such categories can be identified, the Commission seeks comment on ideas for facilitating expeditious processing of those transactions, consistent with the Commission's obligations under the FPA. The Commission offers, as an example, the adoption of abbreviated filing requirements for those transactions under section 203(a)(1)(B) that fall within certain categories. These abbreviated filing requirements could include: (a) A request for partial waiver that sets forth the requirements for which waiver is sought; and (b) a certification by the applicants that the proposed transaction does not raise concerns under the Commission's analysis of whether a transaction is consistent with the public interest (*i.e.,* the transaction will have no adverse effect on competition, rates, or regulation, and will not result in cross-subsidization). The Commission seeks comment on alternative methods as well.

III. Comment Procedures

42. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 28, 2016. Comments must refer to Docket No. RM16–21–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

43. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

44. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

45. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

46. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

47. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

48. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: September 22, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23443 Filed 9–27–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0774; FRL–9952–23]

Registration Review Proposed Decisions for Sulfonylurea Herbicides; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of July 14, 2016, concerning the opening of a public comment period for a proposed interim decision for 22 sulfonylurea herbicides. This document reopens the comment period until November 14, 2016. This comment period is being reopened in response to a number of requests from various stakeholders citing difficulty commenting due to the length, quantity, and complexity of the Risk Assessments.

DATES: Comments, identified by docket identification (ID) numbers: EPA–HQ–OPP–2011–0663, EPA–HQ–OPP–2010–0478, EPA–HQ–OPP–2012–0878, EPA–HQ–OPP–2011–0994, EPA–HQ–OPP–2012–0387, EPA–HQ–OPP–2011–0745, EPA–HQ–OPP–2015–0625, EPA–HQ–OPP–2012–0717, EPA–HQ–OPP–2012–0833, EPA–HQ–OPP–2011–0375, EPA–HQ–OPP–2012–0372, EPA–HQ–OPP–2011–0438, EPA–HQ–OPP–2011–0844, EPA–HQ–OPP–2011–1010, EPA–HQ–OPP–2012–0178, EPA–HQ–OPP–2012–0433, EPA–HQ–OPP–2011–0434, EPA–HQ–OPP–2011–0171, EPA–HQ–OPP–2012–0115, EPA–HQ–OPP–2010–0626, EPA–HQ–OPP–2013–0409, and EPA–HQ–OPP–2012–0605, must be received on or before November 14, 2016.

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adopt a monetary threshold for mergers and consolidations in amended subsection 203(a)(1)(B). Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 32.

[48] For example, in Fiscal Year 2015, the Commission received 216 applications for approval under section 203. Approximately 20 percent of those applications were filed only under section 203(a)(1)(B) and fell below the $10 million threshold.

TABLE—CHEMICALS WITH REOPENED COMMENT PERIODS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Bensulfuron-methyl, 7216	EPA–HQ–OPP–2011–663	Moana Appleyard, *appleyard.moana@epa.gov,* (703) 308–8175.
Chlorimuron-ethyl, 7403	EPA–HQ–OPP–2010–478	Leigh Rimmer, *rimmer.leigh@epa.gov,* (703) 347–0553.
Chlorsulfuron, 0631	EPA–HQ–OPP–2012–878	Miguel Zavala, *zavala.miguel@epa.gov,* (703) 347–0504.
Flazasulfuron, 7271	EPA–HQ–OPP–2011–994	Ricardo Jones, *jones.ricardo@epa.gov,* (703) 347–0493.
Foramsulfuron, 7252	EPA–HQ–OPP–2012–387	Leigh Rimmer, *rimmer.leigh@epa.gov,* (703) 347–0553.
Halosulfuron-methyl, 7233	EPA–HQ–OPP–2011–745	Brittany Pruitt, *pruitt.brittany@epa.gov,* (703) 347–0289.
Imazosulfuron, 7281	EPA–HQ–OPP–2015–0625	Caitlin Newcamp, *newcamp.caitlin@epa.gov,* (703) 347–0325.
Iodosulfuron-methyl-sodium, 7253	EPA–HQ–OPP–2012–717	Leigh Rimmer, *rimmer.leigh@epa.gov,* (703) 347–0553.
Mesosulfuron-methyl, 7277	EPA–HQ–OPP–2012–833	Maria Piansay, *piansay.maria@epa.gov,* (303) 308–8063.
Metsulfuron-methyl, 7205	EPA–HQ–OPP–2011–375	Brian Kettl, *kettl.brian@epa.gov,* (703) 347–0535.
Nicosulfuron, 7227	EPA–HQ–OPP–2012–372	Nathan Sell, *sell.nathan@epa.gov,* (703) 347–8020.
Orthosulfamuron, 7270	EPA–HQ–OPP–2011–438	Khue Nguyen, *nguyen.khue@epa.gov,* (703) 347–0248.
Primisulfuron-methyl, 7220	EPA–HQ–OPP–2011–844	Christina Scheltema, *scheltema.christina@epa.gov,* (703) 308–2201.
Prosulfuron, 7235	EPA–HQ–OPP–2011–010	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov,* (703) 308–8025.
Rimsulfuron, 7218	EPA–HQ–OPP–2012–178	Leigh Rimmer, *rimmer.leigh@epa.gov,* (703) 347–0553.
Sulfometuron-methyl, 3136	EPA–HQ–OPP–2012–433	Caitlin Newcamp, *newcamp.caitlin@epa.gov,* (703) 347–0325.
Sulfosulfuron, 7247	EPA–HQ–OPP–2011–434	Nicole Zinn, *zinn.nicole@epa.gov,* (703) 308–7076.
Thifensulfuron-methyl, 7206	EPA–HQ–OPP–2011–171	Steven Snyderman, *snyderman.steven@epa.gov,* (703) 564–0370.
Triasulfuron, 7221	EPA–HQ–OPP–2012–115	Margaret Hathaway, *hathaway.margaret@epa.gov,* (703) 305–5076.
Tribenuron-methyl, 7217	EPA–HQ–OPP–2010–626	Linsey Walsh, *walsh.linsey@epa.gov,* (703) 347–8030.
Trifloxysulfuron-Sodium, 7208	EPA–HQ–OPP–2013–409	Nicole Zinn, *zinn.nicole@epa.gov,* (703) 308–7076.
Triflusulfuron-methyl, 7236	EPA–HQ–OPP–2012–605	Sue Bartow, *bartow.susan@epa.gov,* (703) 603–0065.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of July 14, 2016 (81 FR 45477) (FRL–9948–29).

FOR FURTHER INFORMATION CONTACT: Margaret Hathaway, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5076; email address: *hathaway.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** document of July 14, 2016. In that document, EPA opened a public comment period for a proposed interim decision for 22 sulfonylurea herbicides: Bensulfuron-methyl, chlorimuron-ethyl, chlorsulfuron, flazasulfuron, foramsulfuron, halosulfuron-methyl, imazosulfuron, iodosulfuron-methyl-sodium, mesosulfuron-methyl, metsulfuron-methyl, nicosulfuron, orthosulfamuron, primisulfuron-methyl, prosulfuron, rimsulfuron, sulfometuron-methyl, sulfosulfuron, thifensulfuron-methyl, triasulfuron, tribenuron-methyl, trifloxysulfuron-sodium, and triflusulfuron-methyl. EPA is hereby reopening the comment period for 45 days.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of July 14, 2016. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 14, 2016.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–23437 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0688; FRL–9947–01–OEI]

Agency Information Collection Activities; Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: ''Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment'' (EPA ICR No. 1031.11, OMB Control No. 2070–0017). This is a request to renew the approval of an existing ICR, which is currently approved through September 30, 2016. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** of March 10, 2016 (81 FR 12730). With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OPPT–2015–0688, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to *OMB Desk Officer for EPA.*

EPA's policy is that all comments received will be included in the docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This ICR is currently scheduled to expire on September 30, 2016. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Under PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: TSCA section 8(c) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company. This ICR addresses the information reporting and recordkeeping requirements found in 40 CFR part 717.

Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this ICR are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Respondent's obligation to respond: Mandatory; see 40 CFR part 717.

Estimated number of respondents: 13,160 (total).

Frequency of response: On occasion.

Total estimated burden: 25,527 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,911,471 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 1,405 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to EPA's estimate of fewer potential respondents affected by the reporting requirement.

Authority: 44 U.S.C. 3501 *et seq.*

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–23384 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2016–0010; FRL 9953–27–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping for Institutional Dual Use Research of Concern (iDURC) Policy Compliance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), "Recordkeeping for Institutional Dual Use Research of Concern (iDURC) Policy Compliance" (EPA ICR No. 2530.02, OMB Control No. 2080–0082) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a request for extension of the ICR currently approved through September 30, 2016. Public comments were previously requested via the **Federal Register** (81 FR 33530) on May 26, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 28, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–ORD–2016–0010, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brendan Doyle, Office of Research and Development, Mail Code: 8801R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4584; email address: *doyle.brendan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: To comply with the U.S. Government *Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (Policy)* (*www.phe.gov/s3/dualuse/Pages/default.aspx*), EPA must ensure that the institutions that are subject to the *Policy* train their laboratory personnel and maintain records of that training. This training is specific to "dual use research of concern," and should include information on how to properly identify DURC and appropriate methods for ensuring research that is determined to be DURC is conducted and communicated responsibly.

Form Numbers: None.

Respondents/affected entities: Private sector and the federal-owned/contractor-operated labs.

Respondent's obligation to respond: Mandatory (per *EPA Order 1000.19: Policy and Procedures for Managing Dual Use Research of Concern*).

Estimated number of respondents: 24 (total).

Frequency of response: Only once and/or as necessary.

Total estimated burden: 72 hours (per year over three years). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,320 (per year over three years), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no increase or decrease of hours in the total estimated respondent burden compared with the emergency ICR currently approved by OMB. This burden is expected to stay the same due to the same number of estimated respondents and research projects.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–23385 Filed 9–27–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0667 and 3060–1104]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 28, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronics Equipment; Section 76.1621, Equipment Compatibility Offer; Section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 66,501 responses.

Estimated Time per Response: .017 hours–3 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) and Section 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 17,353 hours.

Total Annual Cost: $1,355.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.630(a) states a cable system operator shall not scramble or otherwise encrypt signals carried on the basic service tier. This requirement is subject to certain exemptions explained below. Requests for waivers of this prohibition, which are allowed under 47 CFR 76.630(a)(2), must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

47 CFR 76.1621 states a cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/

descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year (*i.e.,* in subscriber billings or pre-printed information on the bill).

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

Information Collection Requirements

In October 2012, the Commission loosened its prohibition on encryption of the basic service tier. This rule change allows all-digital cable operators to encrypt, subject to certain consumer protection measures. 77 FR 67290 (Nov. 9, 2012); 47 CFR 76.630(a)(1). Encryption of all-digital cable service will allow cable operators to activate and/or deactivate cable service remotely, thus relieving many consumers of the need to wait at home to receive a cable technician when they sign up for or cancel cable service, or expand service to an existing cable connection in their home.

In addition, encryption will reduce service theft by ensuring that only paying subscribers have decryption equipment. Encryption could reduce cable rates and reduce the theft that often degrades the quality of cable service received by paying subscribers. Encryption also will reduce the number of service calls necessary for manual installations and disconnections, which may have beneficial effects on vehicle traffic and the environment.

Because this rule change allows cable operators to encrypt the basic service tier without filing a request for waiver, we expect that the number of requests for waiver will decrease significantly.

47 CFR 76.1622 states that Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: View a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

OMB Control Number: 3060–1104.

Title: Section 73.682(d), DTV Transmission and Program System and Information Protocol ("PSIP") Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and Responses: 1,812 respondents and 1,812 respondents.

Estimated Hours per Response: 0.50 hours.

Frequency of Response: Third party disclosure requirement; weekly reporting requirement.

Total Annual Burden: 47,112 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 309 and 337 of the

Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 73.682(d) of the Commission's rules incorporates by reference the Advanced Television Systems Committee, Inc. ("ATSC") Program System and Information Protocol ("PSIP") standard "A/65C." PSIP data is transmitted along with a TV broadcast station's digital signal and provides viewers (via their DTV receivers) with information about the station and what is being broadcast, such as program information. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers (or viewers) of digital television ("DTV").

ATSC PSIP standard A/65C requires broadcasters to provide detailed programming information when transmitting their broadcast signal. This standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. This standard requires broadcasters to populate the Event Information Tables ("EITs") (or program guide) with accurate information about each event (or program) and to update the EIT if more accurate information becomes available. The previous ATSC PSIP standard A/65–B did not require broadcasters to provide such detailed programming information but only general information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–23381 Filed 9–27–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreements is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012200–004.

Title: G6/Zim Transpacific Vessel Sharing Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte Ltd. (Operating as one Party); Hapag-Lloyd AG and Hapag-Lloyd USA LLC (Operating as one Party); Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited.; and Zim Integrated Shipping Services Limited.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment would expand the geographic scope to include service between certain foreign ports and the U.S. East Coast. It also adds authority for the parties to share vessels and space on strings operated in the Trade by the G6 Lines pursuant to the G6 Alliance Agreement (FMC Agreement No. 012194). The parties have requested Expedited Review.

Agreement No.: 012428–001.

Title: CMA CGM/ELJSA Asia—USEC Service Space Charter Agreement.

Parties: CMA CGM S.A. and ELJSA Line Joint Service Agreement.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane & DeMay, LLP; 50 Main Street, Suite 1045, White Plains, NY, 10606.

Synopsis: The amendment would add Taiwan and Panama to the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 23, 2016.

Karen V. Gregory,

Managing Director.

[FR Doc. 2016–23401 Filed 9–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16TZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research to Develop HIV Social Marketing Campaigns for Healthcare Providers—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

According to recent estimates, approximately 1.2 million people are living with human immunodeficiency virus (HIV) in the United States, and for the past several years, approximately 50,000 people have been diagnosed annually. It is well-established that certain populations are disproportionately affected by HIV, including men who have sex with men (MSM), African Americans, Hispanics/Latinos, and transgender communities.

In part, to address these health disparities, CDC first published guidelines for HIV testing in health care settings in 2003. CDC updated this guidance to reflect changes in the evidence base in 2006. As the prevention landscape has evolved, so too has CDC's guidance for health care providers. Most recently, CDC published guidelines for health care providers on pre-exposure prophylaxis (PrEP) and recommendations for HIV prevention with adults and adolescents with HIV. Despite clear and compelling guidance from CDC, past studies have shown that patient-provider communication about HIV testing and prevention is uncommon and conversations that do take place tend to be brief.

CDC has developed four social marketing campaigns to support patient-provider communication about HIV. These campaigns have made great strides in addressing health care providers' information needs, thereby building their capacity to discuss HIV prevention with their patients. At this juncture, particularly with the evolving HIV prevention landscape, more data are needed to deepen our understanding of providers' interpretation and understanding of existing and emergent HIV prevention science; how providers use guidance or evidence-based approaches in their practices generally as well with populations that have been largely overlooked (*e.g.*, transgender individuals); and how to develop new or enrich existing provider materials to make them more informative, appealing, and usable.

The three-year study proposes a series of in-depth interviews with 600 healthcare providers (*i.e.*, physicians, physician assistants, and nurses) identified by contractor staff and professional recruiting firms. Data will be collected through one-time, hour-long, individual, in-depth interviews accompanied by a computer-assisted personal interview (total of 1 hour and 15 minutes per person). We anticipate screening 1,200 individuals to obtain 600 individuals who will participate in a 1-hour, in-depth interview and complete a 15-minute computer-assisted personal interview (web-based) survey. All data collections will be conducted only one time. Respondents who will participate in these interviews will be selected purposively to inform the development of appropriate messaging and materials for healthcare providers. Topic areas addressed within the interviews may include HIV prevention, HIV treatment, and linkage and referral to services. Data will be securely stored on password-protected computers and in locked file cabinets.

The information gathered through this data collection will allow CDC to develop timely, relevant, clear, and engaging materials that continue to support patient-provider communications related to HIV prevention. Participation of respondents is voluntary, and there is no cost to respondents other than their time.

The total estimated annualized burden hours are 950.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health care providers	Screener	1,200	1	10/60
	Web-based survey	600	1	15/60
	Interviews	*600*	*1*	*1*
	Exploratory guide—Prevention with positives and retention in care	50	1	1
	Exploratory guide—Transgender health	50	1	1
	Exploratory guide—HIV prevention	50	1	1
	Message testing guide	150	1	1
	Concept testing guide	150	1	1
	Materials testing guide	150	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–23340 Filed 9–27–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0400]

Determination of Regulatory Review Period for Purposes of Patent Extension; IONSYS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IONSYS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 28, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 27, 2017. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2007–E–0400, "Determination of Regulatory Review Period for Purposes of Patent Extension; IONSYS." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product IONSYS (fentanyl hydrochloride). IONSYS is indicated for the short-term management of acute postoperative pain in adult patients requiring opioid analgesia during hospitalization. Subsequent to this approval, the USPTO received a patent term restoration application for IONSYS (U.S. Patent No. 5,697,896) from Alza Corp., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration and the product's regulatory review period. In a letter dated August 12, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of IONSYS represented the first permitted commercial marketing or use of the product.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IONSYS is 4,835 days. Of this time, 3,862 days occurred during the testing phase of the regulatory review period, while 973 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* February 26, 1993. The applicant claims February 27, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 26, 1993, which was 30 days after FDA receipt of the IND.
2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* September 23, 2003. FDA has verified the applicant's claim that the new drug application (NDA) for IONSYS (NDA 21–338) was initially submitted on September 23, 2003.
3. *The date the application was approved:* May 22, 2006. FDA has verified the applicant's claim that NDA 21–338 was approved on May 22, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–23330 Filed 9–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; The Division of Independent Review Grant Reviewer Recruitment Form

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than November 28, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–29, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Division of Independent Review Grant Reviewer Recruitment Form.

OMB No. 0915–0295—Extension.

Abstract: HRSA's Division of Independent Review (DIR) is responsible for administering the review of eligible grant applications submitted to HRSA. DIR ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject experts knowledgeable in health and public health disciplines for which support is requested. Review findings are advisory to HRSA programs responsible for making award decisions.

This request continues a Web-based data collection system, the Reviewer Recruitment Module (RRM), used to gather critical review participant information. The RRM uses standardized categories of information in drop down menu format for data such as the following: Degree, specialty, occupation, work setting, and in select instances affiliations with organizations and institutions that serve special populations. Some program regulations require that application objective review committees contain consumers of health services. Other demographic data may be voluntarily provided by a potential review participant. Defined data elements assist HRSA in finding and selecting expert grant review participants for objective review committees.

HRSA maintains a roster of approximately 6,000 qualified individuals who served on HRSA objective review committees. The Web-based RRM simplifies review participant registration entry using a user-friendly Graphical User Interface (GUI) with a few data drop down menu choices and a search engine that supports key word queries in the actual resume or Curriculum Vitae text. Review participants can also update their information electronically. The RRM is 508 compliant and accessible by the general public using any of the commonly used Internet browsers via a link on the HRSA "Grants" Internet site or by keying the RRM URL into their browser.

Need and Proposed Use of the Information: HRSA uses the RRM to collect information from individuals who are willing to volunteer as objective review committee participants for the Agency's discretionary and competitive grant or cooperative agreement funding opportunities. The RRM provides HRSA with an effective search and communication functionality with which to identify and contact qualified potential grant review participants. The RRM has an enhanced search and reporting capability to help DIR ensure that HRSA's review participant pool has the necessary skills and diversity to meet the ever-evolving need for qualified grant review participants. When DIR identifies an expertise, demographic need, or any other specific needs that are under-represented in the RRM pool, DIR can recruit specifically to address those needs. Expertise is always the primary determinant in selecting potential review participants for any grant review and no participant is required to provide demographic information to join the pool or be selected as a reviewer for any competition.

Likely Respondents: Individuals with experience in social, cultural, and health care fields who are knowledgeable about HRSA's mission and competitive program needs to deliver quality health care to all Americans.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
New review participants	250	1	250	.166	42
Updating review participants information	5,000	1	5,000	.333	1,665
Total	5,250		5,250		1,707

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–23306 Filed 9–27–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service 2016 Performance Review Board (PRB)

SUMMARY: The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service 2016 Performance Review Board.

FOR FURTHER INFORMATION CONTACT: For further information about the NIH Performance Review Board, contact the Office of Human Resources Division of Senior and Scientific Executive Management, National Institutes of Health, Building 2, Room 5E18, Bethesda, Maryland 20892, telephone 301–402–7999 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members: Alfred Johnson, Chair, Joellen Austin, Michelle Bulls, Michael Gottesman, Michael Lauer, Andrea Norris, LaVerne Stringfield, Lawrence Tabak, Timothy Wheeles.

Dated: September 22, 2016.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2016–23391 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: October 20, 2016.

Open: 8:00 a.m. to 8:30 a.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 10, 9th Floor, Bunim Room 9S233, 10 Center Drive, Bethesda, MD 20892.

Closed: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 9th Floor, Bunim Room 9S233, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Michael W. Krause, Ph.D., Scientific Director, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23314 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC review (2017/01).

Date: November 17, 2016.

Time: 08:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; R13 Review (2017/01).

Date: December 6, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Dated: September 21, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23313 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: November 17, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Improving Diabetes Management in Children with Type 1 Diabetes (DP3).

Date: November 17, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases Centers.

Date: November 17–18, 2016.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel, Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23315 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Heart, Lung, and Blood Institute (NHLBI) COPD National Action Plan; Request for Public Comments

SUMMARY: NHLBI, with input from federal and nonfederal partners, is developing the COPD National Action Plan to help guide stakeholders nationwide in their efforts to reduce the burden of Chronic Obstructive Pulmonary Disease (COPD). The purpose of this notice is to seek public input on the current draft of the COPD National Action Plan.

DATES: To ensure consideration, your responses must be received by Friday, October 28, 2016.

ADDRESSES: Responses to this Notice must be submitted electronically using either the web-based format at *http://www.nhlbi.nih.gov/health/educational/copd/get-involved/town-hall.htm* or email to *COPDActionPlan@porternovelli.com.*

FOR FURTHER INFORMATION CONTACT: Lenora E. Johnson, DrPH; Director, Office of Science Policy, Engagement, Education, and Communications; National Heart, Lung, and Blood Institute; 9000 Rockville Pike, Bldg. 31, MSC 2480, Bethesda, MD 20892–2480, Telephone: 301–496–4236, Fax: 301–402–2405.

SUPPLEMENTARY INFORMATION:

Background

The NHLBI—part of the National Institutes of Health (NIH)—plans, conducts, and supports research related to the causes, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases; and sleep disorders. The NHLBI is the NIH institute with primary responsibility for portfolio of research related to lung diseases.

The NHLBI provides global leadership for research, training, and education programs to promote the prevention and treatment of heart, lung, and blood diseases and enhance the health of all individuals so that they can live longer and more fulfilling lives. The Institute also administers national health education campaigns on COPD, women and heart disease, healthy weight for children, and other topics. NHLBI press releases and other materials are available online at *www.nhlbi.nih.gov.*

The importance of COPD as a public health issue was highlighted by the Senate Appropriations Committee in fiscal year 2012 with its charge to the NHLBI "to work with community stakeholders and other federal agencies, including the Centers for Disease Control and Prevention (CDC), to develop a national action plan to respond to the growing burden of this disease." A letter from Reps. John Lewis, Dave Joyce and Carol Shea-Porter in November 2014 to Dr. Thomas Frieden, Director of the CDC, and Dr. Francis Collins, Director of the NIH, requested "that the NIH and the CDC create a National Action Plan for COPD in fiscal year 2015."

In response to these requests and in collaboration with CDC and other federal partners, the NHLBI organized several trans-governmental preparatory workshops to discuss the development of such a plan. These workshops informed the establishment of six initial core goals to be addressed by the COPD National Action Plan.

In early 2016, the NHLBI hosted a COPD Town Hall Meeting with both federal and nonfederal stakeholders, including patients and their families. During the two-day meeting, attendees were invited to join one of six working groups, each charged with developing objectives, strategies, and benchmarks for a specified goal. The recommendations made by the working groups directly informed the development of the full draft of the COPD National Action Plan that is now available for public input.

Following the public comment period, the NHLBI will incorporate the feedback, finalize the COPD National Action Plan, and post the document for the public via the NHLBI Web site.

Information Requested

This notice invites public comment on the draft COPD National Action Plan draft. We ask that the public review the draft and provide feedback on its content, strategies, and tactics, as well as the opportunities it suggests organizations consider to help reduce the burden of COPD.

Input is being sought on each of the areas identified below, and respondents can provide comment to select areas or all of them.

(1) *Goal 1:* Empower people with COPD, their families, and caregivers to recognize and reduce the burden of COPD.

(2) *Goal 2:* Improve the prevention, diagnosis, treatment, and management of COPD by promoting and sustaining the education and training of health care professionals.

(3) *Goal 3:* Collect, analyze, disseminate, and report COPD-related public health data that drives change and tracks progress.

(4) *Goal 4:* Increase and sustain research to better understand prevention, pathogenesis, diagnosis, treatment, and management of COPD.

(5) *Goal 5:* Translate national policy, education, and program recommendations into legislative, research, and public health care actions.

(6) Additional comments, information, or suggestions about organizations that should be part of the COPD National Action Plan implementation.

General Information

All of the fields in the response are optional and voluntary. Any personal identifiers will be removed when responses are compiled. Proprietary, classified, confidential, or sensitive information should not be included in your response. This notice is for planning purposes only and is not a solicitation for applications or an obligation on the part of the United States (U.S.) government to provide support for any ideas identified in response to it. Please note that the U.S. government will not pay for the preparation of any comment submitted or for its use of that comment.

Please provide your name and email address so that we can follow up with you should we have any questions regarding your submission. If you are a member of a particular advocacy or professional organization, please indicate the name and primary focus of the organization (*i.e.,* research support, patient care, etc.) and whether you are responding on behalf of your organization. If you are not, please indicate your position within the organization.

Privacy Act Notification Statement: We are requesting your comments on the draft COPD National Action Plan. The information you provide may be disclosed to NHLBI staff and contractors working on our behalf. Submission of this information is voluntary. However, the information you provide will help us develop a more complete COPD National Action Plan. Additionally, contact details will allow us to follow up with you should there be any questions to your feedback.

Collection of this information is authorized under 42 U.S.C. 203, 24 1, 2891–1 and 44 U.S.C. 310 I and Section 30 l and 493 of the Public Health Service Act regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions.

Dated: September 21, 2016.

Gary H. Gibbons,

Director, National Heart, Lung, and Blood Institute, National Institutes of Health.

[FR Doc. 2016–23392 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; R21 Innovation Awards.

Date: October 24, 2016.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892.

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23312 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Mechanisms of Neurodegeneration.

Date: October 24, 2016.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carole L. Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Shared and High-end Flow Cytometers (S10).

Date: October 26, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: PAR: 14–021: National Resource for Automated Molecular Biology.

Date: October 26–28, 2016.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Residence Inn Central Park, 1717 Broadway, New York, NY 10019.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: October 27–28, 2016.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–451–0996, *marygs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites by Hilton, Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Braindisorders and Related Neurosciences.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Vilen A. Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County

Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Applications.

Date: October 27, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington Natl Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Ganesan Ramesh, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 2182, MSC 7818, Bethesda, MD 20892, *ganesan.ramesh@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Cognition and Perception Study Section.

Date: October 27–28, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Mark D. Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–915–6298, *lindnermd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: October 27, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Investigations on Primary Immunodeficiency Diseases.

Date: October 27, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–15–319 Biomedical and Behavioral Research Innovations to Ensure Equity (BRITE).

Date: October 27, 2016.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jessica Bellinger, Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23311 Filed 9–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of February 3, 2016.

DATES: *Effective Dates:* The accreditation and approval of Inspectorate America Corporation as commercial gauger and laboratory became effective on February 3, 2016. The next triennial inspection date will be scheduled for February 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 6175 Hwy 347, Beaumont, TX 77705, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.

CBPL No.	ASTM	Title
27–06	D 473 ...	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D 445 ...	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
	D 4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 21, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–23466 Filed 9–27–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of January 14, 2016.

DATES: *Effective Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on January 14, 2016. The next triennial inspection date will be scheduled for January 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 20535 Belshaw Ave., Carson, CA 90746, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	Std. method	Title
27–03	ASTM D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	ASTM D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	ASTM D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	ASTM D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	ASTM D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	ASTM D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	ASTM D5002	Density of Crude Oils by Digital Density Meter.
27–48	ASTM D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	ASTM D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
N/A	ASTM D482	Standard Test Method for Ash from Petroleum Products.
N/A	ASTM D4007	Standard test method for water and sediment in crude oil by the centrifuge method (Laboratory procedure).
N/A	ASTM D5705	Standard Test Method for Measurement of Hydrogen Sulfide in the Vapor Phase Above Residual Fuel Oils.
N/A	ASTM D6352	Standard Test Method for Boiling Range Distribution of Petroleum Distillates in Boiling Range from 174 °C to 700 °C by Gas Chromatography.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border

Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 22, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–23467 Filed 9–27–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Viswa Lab as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Viswa Lab as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Viswa Lab has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 26, 2015.

DATES: The accreditation and approval of Viswa Lab as commercial gauger and laboratory became effective on August 26, 2015. The next triennial inspection date will be scheduled for August 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Viswa Lab, 12140 Almeda Rd., Houston, TX 77045, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Viswa Lab is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Marine Measurement.

Viswa Lab is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Meter.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 21, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–23468 Filed 9–27–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2016–0001]

RIN 1652–ZA20

Legal Interpretation of "Field of Transportation"

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: The Transportation Security Administration (TSA) is providing notice that it has issued a legal interpretation of the phrase "field of transportation" that is referenced in the statute requiring TSA to charge fees to recover the cost of its vetting services. By defining this term, TSA clarifies the individuals from whom we may collect and retain fees to recover vetting costs.

This interpretation does not address the term "field of transportation" as it is used in other laws or contexts.

FOR FURTHER INFORMATION CONTACT: Christine Beyer, Senior Counsel, Regulations and Security Standards, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–2702; email *Christine.beyer@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Over the past decade, some Federal agencies and stakeholders have asked TSA whether their employees could enroll for security vetting and pay fees to TSA for this service. In these cases, it was clear that the individuals at issue were in transportation because they were transporting dangerous goods in commercial vehicles. However, recently we have received inquiries concerning the delineation of where transportation begins and ends where the answer is not so apparent. Several key stakeholder groups have asked which employees, employers, or activities in the chemical industry fall within the scope of "field of transportation" in TSA's fee statute, sec. 469(a) of title 6 of the U.S. Code (6 U.S.C. 469(a)), and could pay for TSA's vetting services through user fees.

The fee statute requires TSA to charge reasonable fees for providing credentialing and background investigations in the "field of transportation" but does not define the populations or types of workers included in the field of transportation. It is necessary to interpret the language so that TSA and chemical industry employers and workers all understand the individuals who may pay user fees that TSA can retain to recover vetting costs.

This interpretation states that the "field of transportation" under 6 U.S.C. 469(a) includes an individual, activity, entity, facility, owner, or operator that is subject to regulation by TSA, DOT, or the U.S. Coast Guard, and individuals applying for trusted traveler programs.

Publication of this notice of availability in the **Federal Register** provides public notice that the full interpretation is available for review and downloading from TSA's electronic public docket on the Internet and a link to the docket on TSA's Web site. TSA will also share the interpretation with stakeholders through industry engagement meetings and with appropriate Congressional Committee staff.

Document Availability

You can get an electronic copy of both this notice and the interpretation of the field of transportation as it is used in 6 U.S.C. 469(a) on the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov,* Docket No. TSA–2016–0001; or

(2) Accessing TSA's Web pages at *https://www.tsa.gov/for-industry/hazmat-endorsement, https://www.tsa.gov/for-industry/twic* and *https://www.tsa.gov/for-industry/surface-transportation.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Dated: September 22, 2016.

Susan M. Prosnitz,

Deputy Chief Counsel, Regulations and Security Standards.

[FR Doc. 2016–23370 Filed 9–27–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–69]

30-Day Notice of Proposed Information Collection for Public Comment Under the Paperwork Reduction Act—Rental Assistance Demonstration (RAD) Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection described below will be submitted to OMB for review. By notice published on March 17, 2016, HUD solicited public comment on the proposed information collection for a period of 60 days. The purpose of this notice is to solicit public comment for an additional 30 days.

DATES: *Comment Due Date:* October 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make public comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Marilyn M. Edge, Senior Advisor, Multifamily Housing Office of Recapitalization, Office of Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone 202–708–3730, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Rental Assistance Demonstration allows Public Housing, Moderate Rehabilitation (Mod Rehab), Rent Supplement (Rent Supp), and Rental Assistance Payment (RAP) properties to convert to long-term project-based Section 8 rental assistance contracts. The documents that are the subject of this notice are those used to process and complete the conversion process for Public Housing, Mod Rehab, Rent Supp, and RAP properties.

On March 17, 2016, at 81 FR 14473, HUD published a notice in the **Federal Register** soliciting public comment on the RAD documents for a period of 60 days (60-Day Notice) in accordance with the PRA.

II. Overview of Significant Changes Made to the RAD Closing Documents

In response to public comments from 8 commenters including groups of commenters received on the 60-day notice, HUD made changes to the RAD Closing Documents to incorporate the substantial majority of comments, reduce public burden, clarify the meaning of the documents and make the conversions process smoother:

III. Public Comments on 60-Day Notice and HUD Responses

In response to the solicitation of comments, HUD received 6 public comments. The comments can be found on the *www.regulations.gov* Web site at *https://www.regulations.gov/#!docketBrowser;rpp=25;so=ASC;sb=docId;po=0;dct=PS;D=HUD-2016-0021.*

General Comments

A commenter commended HUD's Office of Recapitalization on its efforts to update the RAD closing documents and, stated that, as a whole, the current package is a great improvement and successfully consolidates many of the various riders, addendums and other areas where the industry has provided feedback into a more manageable and efficient set of documents. The commenter stated that in the spirit of creating even greater transactional efficiency HUD should take additional steps across the board. The commenter stated that there are a number of forms and templates used by HUD throughout the RAD closing process, including some exhibits and attachments, are formatted as difficult/impossible to edit or reformat Portable Document Files (PDFs). The commenter stated that this can make it difficult to make updates and edits (particularly for budget related documents) or reformat when needed. The commenter also stated that this can be particularly onerous if documents are not formatted to meet local jurisdictions recording format requirements, because in many jurisdictions, HUD's forms do not meet font and margin requirements, leading to delays and even the inability to properly record documents.

The commenter recommended that, in addition to the closing documents currently provided on the RAD Web site, HUD provide "blank and editable" MS Word and MS Excel templates of all RAD related documents on its Web site. The commenter also suggested that HUD reconsider which, if any, RAD documents it requires to be recorded and on what time frame. The commenter stated that, in addition to the formatting issues identified above, it may be difficult to provide evidence of recording in a timely fashion, particularly if the jurisdiction does not electronically record documents.

The commenter recommended that HUD permit developers to self-certify that documents have been submitted for recording or even waive the requirement entirely, or alternatively, that Transaction Managers should be empowered to waive document recording requirements at their discretion. The commenter further recommended that for transfers of assistance under a new construction agreement, if HUD continues to expect the Use Agreement to be recorded, it would be helpful for HUD to issue a rider that describes the process and also commits HUD to release the Use Agreement if no HAP is ultimately signed. The commenter stated that the rider should allow for the term to run 15/20 years from HAP signing, or explain why an alternative term is used appropriately.

HUD Response: HUD thanks the many commenters for their attention to RAD and advice. HUD will consider publishing the final versions of these documents in blank and edible pdf and Word formats to simplify HUD's review with redlines based on comparisons. HUD requires the RAD Use Agreement as well as the Releases of Declaration of Trust and Declarations of Restrictive Covenants to be recorded and will specify the recording order in its closing instructions to the PHA and its counsel. For transfers of assistance under a new construction agreement, HUD will authorize release of the Use Agreement if no HAP Contract is ultimately signed. HUD has elected to not prescribe a separate Rider to cover this situation. HUD will also set the term of the HAP Contract at the signing of the HAP Contract.

RAD Conversion Commitment (RCC)

A commenter expressed appreciation for HUD's efforts to streamline and improve the RCC, stating that it will be a more useful document going forward, but provided the following general comments: The commenter asked that HUD consider providing a definition of PIC (PIH Information Center), and that the HAP Contract—generally defined as "HAP", "Contract", or "HAP Contract" should be referred to consistently as the "HAP Contract." The commenter also suggested that HUD consider adding a box for the approved escalation factor, or scheme, for the Reserve Fund for Replacements. The commenter stated that many investors or lenders will set this factor, or require that the reserve deposits be resized after a set period of time based on a new physical needs assessment. The commenter stated that setting an approved escalation in the RCC will minimize confusion over the HUD requirement and help avoid conflicting requirements between HUD, FHA, and other investors and lenders.

HUD Response: HUD has accepted all of these comments, except the comment relating to the escalation factor. The minimum escalation factor is governed by regulation, as set forth in the HAP Contract, but HUD has revised this section to clarify that other project parties may require additional deposits.

One commenter stated that while it generally believes the addition of the table on the first page of the RCC will lead to ease of use and clarity for the parties, the box entitled "Key Features of Covered Project," with its list of items and blanket requirement to describe various elements of the transaction, seems to be very broad and open-ended. The commenter stated that it is conceivable that a project could meet many, if not nearly all, of the Key Features which would lead to an extensive narrative that would overtake the first pages of the RCC and defeat the purpose of the streamlined table design. The commenter encouraged HUD to either break out some of these items into separate boxes or move this description and feature to an exhibit. The commenter also encouraged HUD to add more definition to the required description to promote consistency in what is included or required by this section of the RCC.

HUD Response: HUD has accepted all of these comments.

A commenter commended HUD on its revamped RCC, stating that the new document will help PHAs, developers and HUD to successfully flag potential issues related to the closing much earlier in the process. The commenter stated that one of the primary issues that it sees arising with the RCC is related to the process in which the RCC is issued. The commenter stated that there are often resolvable problems and/or errors in the RCC when it is issued to the PHA that can result in substantive delays, particularly with debt and equity providers. The commenter recommended that to mitigate delays, HUD amend its RCC process to issue a draft RCC to the PHA prior to the final RCC. The commenter stated that this will allow the PHA and its development team to flag errors and make updates that would otherwise delay the closing process, and it would also make the closing process itself more efficient as it would mitigate the need for as many amendments. The commenter stated that under this scenario, HUD could require PHAs to respond within a fixed period of time (say two weeks) or assume the PHA has given its implied consent to the RCC. Alternatively, HUD could also establish a process to easily amend the RCC at closing.

HUD Response: HUD appreciates the commenter's insight and is considering further processing directions to support the revised RCC form.

Relocation and Civil Rights Concerns

A commenter stated that the RAD Form Documents are a critical part of ensuring the long-term affordability and tenant protections that are required by the RAD program. The commenter stated that these documents also have the potential to provide the necessary transparency surrounding the terms of the RAD conversion, which is currently lacking in many RAD jurisdictions nationwide. The commenter stated that members of its organization and their tenant clients have experienced significant challenges in obtaining basic information about their local RAD conversion, and often have to resort to filing local public records act requests (which, in some cases, have still not obtained important information about the proposed conversion). The commenter stated that it believes that the lack of transparency and collaboration undermines the requirements of the RAD program and slows down a time-sensitive conversion process. The commenter stated that its comments are directed to striving to ensure that the RAD Form Documents include the strongest long-term affordability protections, are used as key tools for tenant education and participation, and are publicly accessible for enforcement and transparency purposes. In this regard, the commenter strongly encouraged HUD to expand the FHEO Accessibility and Relocation Checklist (the Checklist) to include other fair housing issues beyond accessibility and relocation. The commenter stated that including civil rights areas beyond fair housing and accessibility help to provide a more accurate picture of the potential fair housing concerns triggered by the RAD conversion, which would assist in FHEO's RAD fair housing review. The commenter stated that as part of this review, HUD should also inquire about what efforts the PHA has made to determine existing residents' preferences about new construction on the existing site or at new sites.

The commenter also encouraged HUD to require a written relocation plan and involve tenants in the drafting process as part of this Checklist. The commenter stated that requiring a written relocation plan would create the opportunity for increased transparency and tenant participation in a critical part of the RAD conversion that directly affects tenants' living environment and quality of life. The commenter stated, that at the very least, Section III of the Checklist should require PHAs to explain how they have educated and will continue to educate and involve tenants in the relocation planning process, including attaching any materials that were distributed to tenants during the relocation planning process. The commenter stated that Section III of the Checklist should also inquire about what efforts the PHA and/or RAD property owners took to minimize the need for temporary tenant relocation, why temporary relocation is necessary with the proposed level of property rehabilitation, and how the PHA will keep track of residents during relocation. The commenter further suggested that PHAs should be required to provide relocated residents with quarterly updates during relocation so that they have some sense about when they will return to the property.

With respect to relocation plans, the commenter stated that written relocation plans should also identify the anticipated maximum number of vacancies that are required to carry out rehabilitation of the property and the time period for which units will be kept vacant. The commenter stated that some PHAs create vacancies in as many as 20 percent of the units in a property as far out as two years before RAD conversion, and that PHAs continue to receive subsidies for these units despite fewer people are housed at a property that is still a PHA unit. The commenter further stated that, in describing the likely housing markets and communities where tenants will relocate through HCV assistance, Section III of the Checklist should require PHAs to provide the current voucher success rates in the local community, including whether there is a local or state source of income law that includes HCVs as a protected source of income.

Another commenter commented on the RAD FHEO Accessibility Report (Signature Certification). The statement regarding HUD's accessibility requirements (2% and 5%) should be removed based on an inaccurate reference to the section 504 regulations.

HUD Response: HUD will consider these comments further, consistent with fair housing and civil rights legal requirements. HUD anticipates that it will publish, consistent with the Paperwork Reduction Act requirements, a further revised Checklist.

Financing Plan

A commenter strongly urged HUD to take steps to require evidence of tenant participation in the RAD conversion process as part of the Financing Plan submission, including the educational materials that were provided to tenants prior to and since the Commitment to enter into a Housing Assistance Payment Contract (CHAP) was issued. The commenter proposed adding "Evidence of Tenant Participation" as a separate requirement and section (#22) in the Financing Plan. The commenter stated that this section should require PHAs to show evidence of tenant education and participation, that has occurred until this point, as well as future plans for tenant education and involvement, including but not limited to tenant involvement in: Planning discussions about any proposed demolition or reduction of units, changes in unit configuration, the scope of work and timeline for proposed rehabilitation or new construction, temporary relocation planning, transfers of assistance, changes in ownership, changes in rent levels, proposed changes to waiting list setup and procedures, and any programmatic or regulatory waivers that the PHA is seeking or has received from HUD or any state or local entity. The commenter stated that tenant participation and education is critical to a successful and enduring RAD conversion, especially as part of broader conversations around the community's aspirations for community development. The commenter stated that PHAs should be held accountable for adequate and effective tenant education and participation during the RAD conversion process.

HUD Response: HUD appreciates this comment, and suggests that the appropriate vehicle for this is the required tenant meetings, as well as the PHA's PHA/MTW Plan or Significant Amendment to the PHA/MTW Plan. Documentation of the first two resident meetings is required with the RAD application and the third meeting is required before closing, so submission of documentation with the Financing Plan would not be consistent with the RAD Notice. The Financing Plan has been amended to require a summary of a resident's comments received between CHAP and Financing Plan.

A commenter encouraged HUD to make the following changes to existing text in the Financing Plan:

- PHAs should be required to explain why there is any difference in the number of units under the ACC versus the number of units converting to RAD. Will those units be demolished and not replaced under the de minimis exception (greater of 5 percent of the number of units under ACC immediately prior to conversion or 5 units), have those units been vacant for more than 24 months at the time of RAD application, or will those units not convert to RAD because of a Section 18 demolition or disposition?

- PHAs should be required to provide the scope of work and expected costs (total and average per unit), including a narrative of the major rehabilitation or construction work that is expected to be done.
- If a PHA is seeking Section 18 approval, the PHA should be required to explain whether they are seeking demolition or disposition approval and how such approval would further the goals of the RAD program.

HUD Response: HUD has revised the Financing Plan form to more fully address these concerns.

A commenter suggested that HUD should also require the PHA to indicate how and for how long it intends to preserve its interest in the property, preferably via ground lease, and that HUD should require PHAs to seek input from and make this form available to tenants and local tenant advocates prior to submission and at any time thereafter upon informal request.

HUD Response: If there is a ground lease, its term will be considered along with the RAD HAP Contract term during the evidentiary review of documents provided after RCC. The RAD statute (Consolidated and Further Continuing Appropriations Act or 2012 (Pub. L. 112–55, enacted November 18, 2011), as amended, and as implemented by the RAD Notice (PIH 2012–32 (HA) REV–2) permits interests other than ground leases to preserve the affordable housing property. This information will be discussed with the tenants and community as part of the PHA's PHA Plan or MTW Plan process.

Another commenter stated that with respect to the Development Budget, page 5 of the RAD Financing Plan, in the sources of funds section, the "Prior Year Public Housing Capital Funds" should be changed to "Public Housing Capital Funds" and "Take Back Financing" should be changed to "Seller Take Back Financing (Acquisition)".

HUD Response: HUD agrees and has made this change.

The commenter also stated that in the operating pro forma section, the maintenance line item and operations should be separated, and that the term "maintenance" is misspelled.

HUD Response: HUD has corrected the spelling but believes that maintenance and operations should be considered together.

Another commenter stated that the revised Financing Plan delays Fair Housing review (Upfront Civil Rights review, and Site and Neighborhood Standards review) to coincide with the Financing Plan review, but that given that the Fair Housing review often can cause significant delays in the processing of a transaction, the commenter stated that it believes that the Fair Housing review could and should begin prior to the Financing Plan submission. The commenter stated that PHAs are consistently encouraged to submit Fair Housing documentation for review as early as possible. The commenters stated that the current Financing Plan reads as though PHAs should be submitting the Fair Housing review with the Financing Plan and not before. The commenter stated that it believes this is confusing and counter to HUD's previous guidance.

HUD Response: The Financing Plan requires evidence of approval of most upfront civil rights reviews for the items that require longer lead times. HUD anticipates issuing for comment a revised Checklist, as well as a RAD Notice on Fair Housing, Civil Rights and Relocation with improved guidance on the timing of these submissions and reviews.

Another commenter suggested that, in the Financing Type box in Section 1, HUD consider adding "FHA Insured Mortgage" to "Financing Type". The commenter also suggested that, in Paragraph 3 of Section 1, HUD include instruction to the applicant on the expectation regarding the timing of the release of the Declaration(s) of Trust. The commenter noted that while the RAD Notice only requires a legal opinion when a PILOT will continue, they have experienced similar requests when a property tax exemption, generally, will continue post-closing. The commenter requested clarification on the extent of the requirement. Further, they proposed the following revision to Section 9's third sentence: "If PILOT will continue after conversion, upload a draft legal opinion based on state and local law of continuation of PILOT after conversion that will be execute at the time of closing." The commenter also suggested that in Paragraph 8 of Section 12 HUD insert "will" after "PHA" in "whether the PHA still be."

HUD Response: HUD has incorporated the four recommendations suggested by this commenter.

A commenter also noted a lack of detail regarding the supporting documentation that is required for the release of the Declaration(s) of Trust at closing in Section 17. They requested illustrative examples of supporting documentation that would support releasing the DOT at closing and when such supporting documents must be submitted to HUD.

HUD Response: HUD has given some guidance on this in the RAD Notice, but prefers to consider this type of request on a case-by-case basis with specific factual information provided by the PHA.

The commenter proposed moving Section 18 to the end of the Financing Plan to be clear that the certification applies to the entire Financing Plan. Lastly, the commenter suggested that HUD replace "Appendix C" in Paragraph 3 of Section 19 with "Appendix III" in order to remain consistent with that RAD Notice.

HUD Response: HUD agrees and has made these changes.

RAD Conversion Commitment (RCC) (First Component)

A commenter stated that because the issuance of the RCC indicates HUD's approval of the Financing Plan and occurs approximately 30–90 days before closing, PHAs should be required to provide evidence of tenant education and participation that has occurred until that point, as well as future plans for tenant education and involvement, including but not limited to: Tenant involvement in planning discussions about any proposed demolition or reduction of units, changes in unit configuration, the scope of work and timeline for proposed rehabilitation or new construction, temporary relocation planning, transfer of assistance, changes in ownership, changes in rent levels, proposed changes to waiting list setup and procedures, any programmatic or regulatory waivers that the PHA is seeking or has received from HUD or any state or local entity, and financial support logistics for legitimate tenant organizations moving forward.

The commenter stated that tenant participation and education is critical to a successful and enduring RAD conversion, especially as part of broader conversations around the community's aspirations for community development. The commenter stated that PHAs should be held accountable for adequate and effective tenant education and participation during the RAD conversion process, and that the RCC should indicate that (1) if an MTW agency chooses to convert assistance to PBRA under RAD, the converting RAD project(s) will no longer be included as part of the PHA's MTW program, and (2) if an MTW agency chooses to convert assistance to PBV under RAD, the converting RAD project(s) will continue to be included in the PHA's MTW program, subject to the observance of RAD requirements as set forth in applicable statutes, regulations, and policies. The commenter concluded its comment on this matter stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request. The commenter stated that since the RAD program was enacted, tenants and their advocates have faced significant challenges, including a lack of good faith cooperation and transparency by PHAs, when trying to learn and become involved in the proposed RAD conversion, and HUD should take affirmative steps to advance the transparency and tenant participation goals of the RAD program.

HUD Response: HUD appreciates this comment, and suggests that the appropriate vehicle for much of this discussion with tenants are the required tenant meetings, as well as the public comment period regarding the preparation of or amendment of the PHA's PHA Plan or MTW Plan. HUD has determined that other elements of this comment (such as the implications of participation on MTW agencies) are adequately addressed in the RAD Notice. HUD will consider whether additional guidance on these topics is appropriate outside the context of the Financing Plan template. In support of this comment, the Financing Plan template has been amended to require Evidence of Approval of Amendment to the PHA or MTW Plan if not contained within the Plan.

Another commenter requested that HUD's Office of General Counsel should review and confirm the non-dwelling assets of the project proposed for conversion and provide information to the PHA prior to the issuance of the RCC. The commenter also stated that the PHA should provide a courtesy (unsigned) copy of the RCC or the approved Financing plan committee term sheet prior to the issuance of the RCC.

HUD Response: HUD's Office of Public Housing has instituted a process for the review and confirmation of the treatment of non-dwelling assets and works with the PHA on this information prior to the issuance of the RCC. HUD will consider the commenter's suggestion of providing draft RCCs as it develops further processing directions to support these new forms.

Another commenter suggested that HUD consider revising the box titled "Unit Mix of Converting Project" on page 1 to include the Covered Project. The commenter also suggested in the "Identify amount and source of any other reserves or other funds that will be transferred to Project Owner upon Closing for uses other than to capitalize reserves" box in the table on page 2, if such funds refer only to PHA funds to be used for such purposes, insert "from the PHA" prior to "to Project Owner." The commenter also suggested that HUD replace "initial repairs" in the "RAD Rehab Assistance Payments" box in the table on page 2 with "Work" to be consistent with the term defined in Section 19. The commenter also suggested that in the "Green practices" box in the table on page 2, HUD delete "so-called" and reference Section 1.4.A.2 of the RAD Notice, which describes industry-recognized green building certifications. The commenter suggested that in the first sentence of the opening paragraph on page 3 HUD replace "property" with "assistance from the Converting Project to support the Covered Project" to clarify the definition of Project. The Commenter suggested HUD replace "transferring" with "conveying," in the last sentence of the opening paragraph, to make clear such applicability is separate from any transfer of assistance that may or may not take place as part of the conversion. The commenter also noted that if the PHA is not conveying the Project, all references to Project Owner in the RCC should mean the PHA.

HUD Response: HUD has incorporated all of these comments except for the green practices box which has been deleted because it is no longer a ranking factor in the RAD application.

RCC—Applicable HUD Regulations and Requirements

A commenter suggested that the first sentence of Section 1 could be revised by removing "PHA and" consistent with the change noted in the opening paragraph regarding when the PHA will be referenced in the RCC as the Project Owner. They additionally suggested replacing "Agreement" with "Commitment" in the second sentence to be consistent with how the RCC is defined. With regard to the conflict provisions in the section, the commenter recommended that any conflicts between the RCC and any other HUD requirements should be identified and resolved, therefore allowing this provision to be removed and providing greater certainty to RAD program participants.

HUD Response: HUD has revised the terminology as suggested. However, it has maintained its discretion in resolving any conflicts whenever they may arise.

RCC—Acceptance of Commitment (Section 2)

A commenter submitted a comment on the Acceptance of Commitment/Expiration at page 3. The commenter stated that the Commitment should terminate 60 days from the date of the RCC issuance instead of 30 days. The commenter stated that if the transactions contemplated by this commitment are not closed to HUD's satisfaction within 180 days from RCC, this commitment will expire at 90 days. The commenter stated that PHAs need more time to close the transaction than 90 days, especially if the reviews from HUD take longer than expected or if the changes in the RCC approval are inconsistent with the financing.

Another commenter stated that Section 2(c) permits HUD to declare the RCC "null and void" without notice or an opportunity to cure, "if the PHA or Project Owner fails to take any action, or deliver any information, called for under the agreement within the time frames contemplated . . ." The commenter stated that this is unnecessary and overreaching. The commenter stated that if the PHA and Project Owner fail to meet HUD's criteria to close, the RCC expires after 90 days (unless HUD extends it), and, in particular, failure to complete an activity should not nullify the RCC unless it means the HUD closing criteria cannot be met. In addition, notice and cure should be available under the failure to take action provision.

Another commenter suggested that in Sections 2(a), 2(b), and 10(c) "the date hereof" is replaced with "the date this Commitment is executed by HUD" since the RCC is not dated.

HUD Response: HUD has made some adjustments to the acceptance and expiration of the Commitment to clarify the timing and process for extension or termination of an RCC.

RCC—(Section 3)

A commenter stated that Section 3 indicates that the Closing Checklist will list all documents to be submitted to and approved by HUD. The commenter stated that Section 6(e) of the RCC indicates that all documents required by lenders for the transaction must be acceptable to HUD in HUD's sole discretion, and Section 21 states that closing is conditioned on the legal review and approval of the Closing Documents. The commenter asked that

HUD clarify what documents must be submitted to HUD for review and approval, as there is a growing misunderstanding on this point throughout the industry and inconsistencies depending on which HUD Field Office is reviewing the RAD closing package. The commenter suggested looking to HUD's mixed-finance requirements for guidance on this point and focusing on the RAD specific documents with HUD having the right to request and review additional documents as needed. The commenter stated that specifically identifying in advance what documents are required to be submitted to HUD for review will allow parties to the transaction to make adjustments to meet deadlines for submissions in a timely fashion, as well as provide consistent expectations for all HUD Field Offices and all RAD program participants.

HUD Response: Exhibit E to the RCC provides the Closing Checklist of the required documents.

RCC—Public Housing Requirements (Section 4)

This section has added language that states that the Converting Project remains subject to all applicable public housing requirements until the effective date of the HAP Contract. The commenter stated that this sentence sets up several regulatory conflicts because, according to the commenter, there can be as much as a month between the closing of the RAD transaction and the effective date of the HAP Contract. The commenter stated that it believes that this requirement unfairly puts PHAs in the crosshairs of compliance, as it is unclear how to comply with the RAD closing documents while simultaneously complying with public housing requirements until the effective date of the HAP Contract. The commenter stated that given the enumeration of requirements in (a)–(c) it is not sure that this additional sentence is necessary, but to the extent HUD believes that it is, the commenter stated that the "Closing" is the more appropriate reference here. The commenter encouraged HUD to re-examine this requirement and issue additional guidance to assist PHAs with compliance.

Another commenter stated that Section 4 should be revised to include the Project Owner's acknowledgement that the Converting Project remains subject to applicable public housing requirements until the effective date of the HAP since the Project Owner will take title to the Project at closing. The commenter stated that, in addition, "all applicable public housing requirements" should be clearly defined and the defined term should be incorporated throughout the enumerated assurances. The commenter also suggested that the Consolidated Owner Certification should be revised at Section 1 to mirror the final changes to Section 4 of the RCC.

HUD Response: HUD has clarified section 4 and the description and scope of applicable HUD requirements.

RCC—Public Housing Requirements (Section 4) (Form HUD–52624)

A commenter made several comments regarding Form HUD–52624. The commenter stated that it believes the reformatting of the RCC to place important information in the initial table will be beneficial to all parties in the transaction. The commenter stated that it wanted to confirm that in instances where assistance is not being transferred, the Covered Project and the Converted Project information will still be completed with duplicate information. The commenter stated that completing the table in this manner is necessary to ensure that the defined terms "Covered Project" and "Converted Project" are accurate throughout the form. The commenter also stated that while the revised formatting will likely provide for more efficient processing of the transaction, providing a draft RCC for review prior to HUD execution would be helpful to avoid inadvertent mistakes that can lead to unnecessary amendments. The commenter offered specific wording changes to this form.

HUD Response: As suggested, HUD has made significant changes in response to this comment and revised the initial table and information to be checked or explained in the new key features section.

RCC—HUD Review of Project Ownership (Section 5)

A commenter stated that it believes HUD should allow for flexibility in this section by adding "unless approved by HUD" at the end. The commenter stated that some conversions have required a limited or early transfer of land to demonstrate site control for purposes of meeting tax credit requirements.

Another commenter suggested that an exception to the prohibition on transfer of ownership interests in the Project prior to closing should be added to allow for site control commitments that may be required as a condition of participation in the Low Income Housing Tax Credit program. The commenter provided the following language: "PHA shall not transfer any ownership interest in the Converting Project prior to the Closing except for site control commitments that may be required as a condition of participation in the Low Income Housing Tax Credit program."

HUD Response: HUD is maintaining the current language in Section 5. HUD does not believe that standard practice or typical LIHTC transactions should require transfer prior to Closing.

RCC—Closing Documents (Section 6)

A commenter stated that Section 6(c) which defines closing documents to be provided to HUD, including "any documents required by lenders or other parties to the transaction, which must be acceptable to HUD in HUD's sole discretion." Because the number and type of non-RAD documents to be submitted may change over time, we recommend more flexible language as shown in the markup that the commenter advises it has provided. The commenter also stated that HUD's review should relate to compliance with program requirements, and that the commenter had previously noted to HUD its concern that the list of documents collected and reviewed is overbroad for HUD's purposes and requires an investment of time by HUD that may not be necessary to ensure that RAD program requirements are met. The commenter stated that its suggested revisions to this section are aimed at giving HUD the flexibility to determine what needs to be submitted as a Closing document as transactions, and the program, evolve.

Another commenter stated that in Section 6, the definition of Closing Documents should be consistent with the documents required to be submitted to HUD pursuant to Section 3. The commenter stated that internal consistency cannot currently be confirmed without a sample Closing Checklist to review. The commenter asked HUD to consider adding the Consolidated Owner Certification in the list of Closing Documents. The commenter stated that not all of the documents listed in (a) through (d) are HUD form documents and that Section 6 should be revised to reflect this.

This same commenter stated that in Section 6(d), no changes have been proposed to the Certification and Assurances, and HUD should consider revising the Certification and Assurances to clearly permit post-closing certification of changes. The commenter stated that such clarification could be achieved by removing Paragraph 2 from the Certification and Assurances and instead requiring a post-closing certification similar to the Certification of No Changes used in mixed-finance transactions be submitted with the final RAD transaction docket to HUD. The commenter also stated that in Section 6(e), including any document required by "other parties" as a Closing Document is confusing and exceptionally broad. The commenter stated that a more clearly defined list of documents should be provided. The commenter stated that, as currently stated, Section 6(e) would require HUD acceptance of development documents, zoning applications, plans and specifications, and construction contracts. The commenter offered revisions to section 6(e).

HUD Response: HUD has revised this section in accordance with these comments.

RCC—Use Agreement Priority (Section 7)

A commenter stated that the requirements of Section 7 for use agreement recording priorities have been uneven. The commenter stated that HUD has approved recording the RAD Use Agreement after recording a deed or ground lease in some circumstances but not others, and this has significant implications for the ability to raise sufficient LIHTC equity in situations where an existing project is being sold to a new partnership and the acquisition credits are generated by the sale. The commenter stated that for practical purposes, when the PHA ground lease is subordinate to the RAD Use Agreement it could significantly diminish the appraised value of the property and thus the amount of acquisition LIHTCs. The commenter stated that for all intents and purposes, the property remains public housing throughout the process whether or not the RAD Use Agreement is recorded prior to or after recording of the ground-lease (or deed)—the only practical result of this inconsistent application is diminishing the amount of potential subsidy flowing to the property. The commenter recommended that HUD issue written guidance to transaction managers explicitly directing them to approve recordation of the ground lease (or deed) prior to the RAD Use Agreement when leveraging LIHTCs generated through the acquisition of an existing project.

Another commenter stated that it sought clarification of what HUD requires regarding subordination to the RAD Use Agreement of existing documents recorded prior to the RAD Use Agreement. The commenter stated that Section 7 of the RCC requires "any and all liens and/or encumbrances against the Covered Project" be subordinated to the RAD Use Agreement. The commenter stated that the Definitions Section of the RAD Notice indicates that the RAD Use Agreement "must be recorded in a superior position to any new or existing financing or other encumbrances on the Covered Project." Section 1.4.B.1.i of the RAD Notice requires that the RAD Use Agreement must "be recorded in a superior position to all liens on the property." The commenter further stated that Sections 1.6.B.4.i and 1.7.A.4.i of the RAD Notice require that "[a]ll loans made that are secured by Covered Projects must be subordinate to a RAD Use Agreement." This same commenter further stated that based on these references and other guidance provided by HUD, it seems the essential requirement is that the RAD Use Agreement controls the operation of the RAD units and survive foreclosure of any other liens. The commenter stated that, however, not all encumbrances include foreclosure rights or other remedies that would jeopardize the RAD Use Agreement. The commenter stated that it believes further policy and guidance on this issue is needed rather than a blanket requirement that "all liens and/or encumbrances" against the property be subordinated to the RAD Use Agreement. The commenter stated that such a requirement dictates those utility easements, subdivision plats and other documents that do not create any third-party foreclosure rights and are arguably benign to the enforcement of and compliance with the RAD Use Agreement must be subordinated to the RAD Use Agreement prior to closing. The commenter stated that if a document of record does not impact the continued effectiveness of the RAD Use Agreement nor affect HUD's enforcement of and the Owner's compliance with the RAD Use Agreement, then subordination is overly burdensome and unnecessary.

The same commenter stated that, in Section 7, HUD should consider clarifying the title documentation to be provided for the Converting Project and the Covered Project. The commenter stated that a title report alone is likely acceptable for the Converting Project in instances of transfers of assistance, but that a title commitment or an owner's pro forma title policy may be more appropriate for the Covered Project in conversions involving the addition of financing to be secured by the Covered Project in order to show all documents that will be recorded at closing. The commenter asked HUD to consider the following revisions to Section 7 to address the above comments

HUD Response: HUD appreciates these concerns and the circumstances which have dictated different recording order. HUD has further clarified this section and inserted some of the commenter's suggested language; however, unless otherwise approved by HUD, the RAD Use Agreement shall be superior to any and all liens and/or encumbrances against the Covered Project and HUD has provided examples of such liens and encumbrances. HUD will require the Project Owner to obtain such consents or subordination agreements and have such documents executed as HUD may determine necessary to establish priority.

RCC—Tax Financial and Legal Consequences (Section 9)

A commenter stated that Section 9 includes a statement that "parties to the transaction are represented by competent counsel" and the commenter asked that HUD delete this language. The commenter stated that the representation is not a "consequence" and the topic is already addressed more appropriately in Section 21.

Another commenter stated that in Section 9, the second sentence should be deleted since legal representation is covered by Section 21, and that if not deleted, HUD should replace "Parties to the transaction" with "PHA and Project Owner" since there are numerous parties involved in the transaction beyond the PHA and Project Owner.

HUD Response: HUD has deleted this language as requested.

RCC—Owner Certifications (Section 10)

A commenter stated that Section 10(a) as revised can be interpreted to extend beyond notices required by RAD, and that "Program" is not defined in the RCC or the RAD Notice.

A commenter stated that, in Section 10(c), add "unless otherwise approved by HUD" to the end of the sentence. The commenter stated that consideration should also be given to how anticipated changes to the relocation notice will impact this certification.

Another commenter stated that it believes the representation in Section 10(c), is problematic since the standards and guidance on relocation continues to evolve. The commenter stated that currently HUD may approve relocation prior to the issuance of the RCC and may conduct transfers in accordance with its ACOP and requested that HUD consider their suggested language.

A commenter stated that Section 10(d) is overly broad and burdensome and should be limited to debarment, suspension, or proposed debarment of the Project Owner. The commenter stated that audits and investigations could presumably prevent a PHA from closing a RAD conversion when such actions may not be material or related to the conversion. The commenter stated that the Section 10(d) certification should be revised and that the self-effectuating re-certification of the statements included in Section 10 by executing the transaction documents should be removed and the certifications should be added to the Consolidated Owner Certification.

Another commenter similarly stated that Section 10(d) is overly broad and would prohibit parties with closed OIG audits, routine financial audits, or Voluntary Compliance Agreements from participating. The commenter stated that this language needs to be revised, and that it is unclear why the breadth of this representation is required, and HUD could protect its interests with narrowed language.

Another commenter stated that while it understands the motivation behind the Section 10(d) certification and concurs that the language in this section itself is so broad that is both unreasonable and incredibly burdensome, it is an unfortunate nature of the business that any portfolio owner or PHA of a certain size is likely to have an open administrative proceeding, audit or investigation. The commenter stated that these are often times random, curable or a result of a frivolous complaint. The commenter stated that the language in the RCC is so broad and undefined that many private developers would be unwilling to sign the RCC without amendments. The commenter recommended that, at a minimum, HUD should update this provision to provide an explicit and detailed list of open covered events or actions that truly warrant the HUD's ongoing concern and reporting. The commenter stated that disclosure of minor items outside the scope of the "bad acts" list should not be required, and further recommended Section D be eliminated entirely from the RCC as it is duplicative of numerous other due diligence procedures.

HUD Response: HUD has adopted many of these comments and their suggested language.

RCC—Changes to the Commitment (Section 13)

The commenter stated that it is concerned that HUD's ability to declare the RCC null and void is not necessary to achieve HUD's goals and opens the door to potentially arbitrary actions. The commenter stated that if the PHA and Project Owner meet HUD's closing requirements they close, and if they don't, the RCC expires after 90 days. The commenter requested that HUD please see suggested edits in the document provided by the commenter.

A commenter stated that in Sections 13 and 14, the level of change warranting amendment to the RCC should be the same. The commenter stated that currently the standard is "substantial" changes to the Financing Plan and "material" changes to the Sources and Uses. The commenter stated that, in addition, a clearer understanding of the definition of substantial or material would be beneficial to all parties involved in the transaction.

HUD Response: HUD has replaced "substantial" with "material" for the standard in determining whether HUD may require an amendment to the RCC and has removed the sentence regarding when the RCC would be voided for economic, feasibility, or other reasons.

RCC—Sources of Funds (Section 14)

A commenter stated that this section is a little hard to follow and confusing as written, and suggested adding subsection labels and other clarifications. The commenter stated that some liens, such as preexisting utility liens, will generally stay superior to the RAD Use Agreement, however, this has not been problematic in the eyes of field counsel in transactions closed to date.

Another commenter stated that in Section 14, HUD should consider deleting the second sentence, "Any and all encumbrances on title must be subordinate to the RAD Use Agreement", which is duplicative of the requirements of Section 7. This same commenter suggested that in the sixth and seventh sentences of Section 14 HUD should insert "public housing" prior to "funds". The commenter stated that Section 14 requires public housing funds advanced from the PHA to be deposited into an account covered by a General Depository Agreement (GDA), but that Section 1.13.B.3 of the RAD Notice states that a GDA is required when no new debt will be utilized in the transaction and that the funds can be held by the lender in instances when new debt is involved in the transaction. The commenter stated that Section 14 should be clarified accordingly.

HUD Response: HUD has significantly rewritten this section in response to these comments and to reflect current fund processing.

RCC—Planned Construction and Rehabilitation (Section 19)

A commenter stated that unnumbered paragraph 2 requires the PHA and Owner to "represent, warrant and certify to HUD that the sources of funds are sufficient to pay for the construction and/or rehabilitation outlined on Exhibit D." The commenter stated that this seems like a guaranty, and should be softened, or alternatively allow the parties to state that they have no knowledge that funding is not sufficient.

The commenter stated that with respect to Section 19(a), as written, this section could be read to apply the requirements of these cross-cutting requirements, without regard to whether or not the regulations would be triggered by their terms. The commenter stated that adding "as applicable" in a few places will help minimize confusion. The commenter stated that subsection (vii) cites to Section 3 for definitions of "construction" and "rehabilitation," but the commenter stated that it could not find the definitions in the Section 3 regulations in 24 CFR part 135.

Another commenter recommended that throughout Section 19, HUD should delete references to "PHA". The commenter stated that the PHA should not have to certify to matters related to construction and rehabilitation since in most conversions the Project Owner controls the decisions and process regarding the Work. The commenter stated that with the change noted in the opening paragraph in instances where the PHA is the Project Owner, this certification as revised remains applicable. The commenter asked that HUD replace "construction and/or rehabilitation outlined on Exhibit D" with "Work." This same commenter stated that in Section 19(a)(v), the leading quotation mark around "alterations" should be moved to include "other alterations" consistent with the cited regulation, and that in Section 19(c), HUD should replace "earn or receive any cash flow distributions" with "withdraw or take any Distributions" to be consistent with the definition of Distribution as provided in the RAD Notice.

A commenter stated that Section 19(c) prohibits the Owner from earning or receiving cash flow until "written HUD acceptance of the completed work." The commenter stated that except for FHA-insured projects, the commenter knows of no such procedures or requirements for HUD to accept the work. The commenter stated that, for example, in PBV the PHA as contract administrator reviews and accepts completed work. The commenter asked that HUD delete and issue additional guidance once HUD has developed a process or procedure to accept the finished work.

This same commenter stated that the additional language in Section 19(d) regarding a completion guaranty is not necessary and the language should be deleted. The commenter stated that the first part of the requirement—which requires a guarantor to complete construction if the contractor fails to do so—is redundant with the requirement to have a payment and performance bond and/or letter of credit in the previous sentence. The commenter stated that the second part of the requirement—to pay for costs that are above budget—also seems to be unnecessary as the budget and the scope of work have already been fixed in Exhibits B and D of the RCC. The commenter stated that the HAP Contract also requires that initial repairs be completed, and HUD's remedy should not be enforced through a completion guaranty, but rather through termination of the RCC or the HAP Contract in the event the initial repairs are not completed. The commenter stated that for additional protection, HUD's interest here may be better served by requiring that the construction contract be a guaranteed maximum price or stipulated sum contract to ensure that the work will be completed on budget. The commenter stated that requiring a guaranty to HUD will likely chill participation by developer partners and does not seem necessary in light of the other remedies available to HUD.

HUD Response: HUD appreciates these comments and has made clarifying adjustments to Exhibit D with complementary changes suggested in part to Sections 19 a, c and d.

RCC—Reserve for Replacements (Section 20)

A commenter suggested the following language for Section 20: "PHA and/or Project Owner shall establish upon closing a Reserve for Replacements. The Initial Deposit (IDRR) and the monthly deposits into the Reserve for Replacements will be made in the amount as established by the approved final physical needs capital assessment report and as set forth in the HAP Contract and adjusted annually in accordance with the HAP Contract and Program Requirements."

Another commenter suggested the removal of "PHA and/or" consistent with the change they suggested in the opening paragraph regarding when the PHA will be referenced in the RCC as the Project Owner.

HUD Response: Within minor wording changes and taking into consideration changes made to the first page of the RCC, HUD has incorporated these comments.

RCC—Counsel (Section 21)

A commenter stated that the language requiring the PHA and the Project Owner to each select counsel should be deleted, as in many cases where the PHA controls the Project Owner separate counsel is not necessary. The commenter stated the new language in Section 21(d) expands the opinion to cover all pending or threatened litigation. The commenter stated that the opinion should be limited to litigation that might affect the project, rather than casting a wide net to any litigation the entity is involved in, such as landlord/tenant disputes in a Section 8 or non-RAD PHA project. The commenter stated that, in addition, requiring HUD consent is overbroad and would require additional review by HUD of completely unrelated litigation, such as the aforementioned landlord/tenant disputes. The commenter stated that, with respect to Section 21(e), this opinion should be able to be based on a title policy or search, as is currently allowed by the model form RAD opinion and should also include a carve-out for items approved by HUD.

Another commenter stated that Section 21 requires PHA and Project Owner to have independent counsel, and that such considerations should be left to PHA and Project Owner to be decided within the context of state ethics law considerations. The commenter stated that Section 21(a)–(f) should align with and track the RAD Model Form Opinion of Counsel (the "Model Opinion"), and highlighted the differences between the two. The commenter stated that the opinion required at Section 21(e), raises the question of whether law firms are to provide opinions regarding lien priority has been something that has been considered extensively within the legal profession. The commenter stated that the American Bar Association, for example, has done an exhaustive review of opinion practices and on the point of lien priority has held that it is outside the purview of a law firm to give an opinion in this regard. The commenter stated that law firms do not undertake the title searches and do not undertake the process of recording documents, nor does a title policy run to the benefit of the law firm, negating the effect of a law firm's reliance on a title policy to give a lien priority opinion. The commenter stated that to give such an opinion arguably negates the effect of a firm's insurance policy. The commenter asked that HUD consider the alternative opinion offered by the commenter, and one that has been accepted by HUD previously.

HUD Response: HUD has made adjustments to this section and has adopted in part suggested language from the commenters especially noting changes to the opinion on title, recording order and superiority of the RAD Use Agreement.

RCC—Last Public Housing Unit

A commenter requested additional guidance to clarify how HUD will withhold HAP payments owed to the Project Owner for the PHA's failure to comply HUD instruction.

HUD Response: HUD is preparing to release a PIH Notice on close-out requirements for PHAs that are converting or have converted all of their public housing assistance. HAP Contracts specify remedies for breach.

RCC—Post Closing Responsibilities (Section 26)

A commenter stated it believes the timeframes added to this Section are not reasonable, and it is not in HUD's interest to impose such rigid timeframes. The commenter stated that depending on the jurisdiction adherence to these timeframes may not be possible and would set up a needless default.

Another commenter stated that post-closing timeframes contained in Section 26 are not realistic considering recording logistics and processes in many jurisdictions and should provide for a minimum of 3 business days for the initial submission of evidence of recording and 60 calendar days for the submission of the final RAD docket.

HUD Response: As suggested, HUD has lengthened the time for initial submission of evidence of recording and submission of the final RAD docket.

RCC—Counterpart (Section 28)

A commenter asked that HUD consider changing "Counterpart" to "Counterparts" throughout. With respect to the signature lines, the commenter suggested deleting the Owner signature block and directing the document drafter to obtain a signature block from the PHA or Owner. The commenter stated that the model is a corporate signature Block, and that, if the owner is a limited partnership, limited liability company, or other entity, the signature block is in an alternative form. The commenter stated it found that use of the signature block is a common error in RCCs. The commenter also commented on Exhibit B, and stated that HUD should consider not including a mandatory format or line items for the uses in Exhibit B. The commenter stated often there is needless time and energy invested in realigning the "uses" line items from a tax credit or other project budget to match with the preset categories. The commenter stated that this can lead to a few line items listed at large amounts and others zeroed out entirely which is not as descriptive as may be needed. The commenter stated that HUD should trust its transaction managers and closing coordinators to work with the PHA and Project Owner to insert a list of uses that balances with the list of sources that accurately reflect the subject project.

HUD Response: HUD has revised the section on Counterparts and improved the signature page to be consistent with the revised terminology in the RCC. HUD has also improved various aspects of the Exhibits to the RCC as suggested by the commenters.

RAD Use Agreement—Preamble and Section 17

A commenter stated that the new structure of the parties to the Use Agreement—an "Owner" and a "Lessee" is not consistent with the language in the RCC and with the way in which these projects will be operated. We suggest that the Use Agreement mirror the structure reflected in the RCC and place the obligations on the Project Owner with the PHA added as needed to reflect that the PHA will be obligated under the Use Agreement in the event the Ground Lease is terminated. The commenter stated that the Project Owner under the Lease is the entity that will own and operate the project and should be the entity that is primarily obligated under the Use Agreement. The commenter stated that, as written, the Use Agreement primarily imposes responsibility on a party that does not have the capacity to enforce such obligations. The commenter strongly suggested that HUD rethink the structure of this Agreement, and requested that HUD look at the markup of this document the commenter provided.

HUD Response: HUD agrees with this comment and has revised the structure of the Use Agreement to make the primary signatory the Project Owner, consistent with the terminology and structure of the RCC. HUD has further revised the document to provide for the PHA, or other owner of the fee estate, to bind the fee interest in the case of a ground lease.

RAD Use Agreement—Section 3

A commenter stated that the language HUD added to Section 3 gives the impression that the tenants must be under 80 percent of area median income (AMI) for the remainder of the term. The commenter provided a markup of this section, which the commenter suggested provided greater clarity.

HUD Response: HUD is not changing the requirements as to tenant income. HUD notes that the tenant income requirements are consistent with the tenant income requirements of both the public housing and section 8 programs.

RAD Use Agreement—Sections 5 and 6

A commenter remarked on sections 5 and 6 (Responsibilities of Owners versus Owners' Agents) of the RAD Use Agreement and stated that it strongly agrees that Fair Housing, Civil Rights and Federal Accessibility Compliance are important priorities, but stated the these are the sole responsibility of the owner not its agents. The commenter recommended striking "and its agents" from paragraph's 5 and 6 of the Use Agreement.

HUD Response: Under law, agents are also responsible, but HUD agrees that the language was ambiguous and has revised this language to read that the project owner and its agents, where applicable, shall ensure that the project complies with the applicable laws.

RAD Use Agreement—Section 7

A commenter stated that the language in Section 7, Restrictions on Transfer, does not reference the owner's right to notice and right to cure, and that this should also be referenced explicitly in the HAP Contract. Another commenter stated that it found the insertion of the last sentence regarding 2 CFR part 200 problematic and too vague. The commenter stated that it is unclear what HUD is trying to impose by the addition of this sentence. The commenter asked if HUD is trying to impose all procurement requirements, or the audit requirements. The commenter stated that neither the RAD Statute nor the RAD Notice make any mention of 2 CFR part 200, nor its predecessor part 85. The commenter stated that moreover, it does not believe that part 200 applies to Section 8 contracts generally and therefore it should not be implicated in the RAD Use Agreement. The commenter stated that HUD should either delete this section or specify which requirements are applicable to the RAD Projects.

Another commenter stated that in Section 7, references to "Project" without reference to Property should be replaced with "Property" or "Property and/or Project". The commenter stated that in the third sentence, insert "on the Property" after "Any lien". Considering revising the fourth sentence as noted below, and that in the fifth sentence, the last reference to "Property and/or Project" should not be capitalized since the stated property and/or project are not part of the defined terms. The commenter also requested guidance on who should receive the original RAD Use Agreement after recording.

HUD Response: HUD has deleted the specific reference to 2 CFR part 200 and will provide more guidance on Part 200 in addition to the guidance found in the current RAD Notice. Changes were also adopted as to the references to Property and/or Project in Section 7. HUD is developing revised closing letter guidance to address issues such as distribution of original and copies of closing documents.

RAD Use Agreement—Section 8

A commenter suggested reinserting the ability to release the Use Agreement in the event of dedication of streets or public utilities. The commenter stated that this language and ability has been included in Declarations of Trust and helps to ensure a timely release of Declarations when necessary to provide utility or street access to the residents of the project. The commenter stated that since there is no formal process for disposition or release RAD Use Agreements, including this language will help these releases move forward until HUD can develop a more comprehensive policy and procedure regarding release. The commenter stated that HUD does not generally record the releases, but rather requires the Project Owner to ensure recordation. The commenter requested that HUD see its markup of this section of the document.

HUD Response: HUD has substantially revised the restrictions on transfer to cover the points noted by the commenter.

RAD Use Agreement—HAP Contract Termination

A commenter stated that HUD or the Contract Administrator has the discretion to terminate the HAP Contract for owner breach, and after termination, and that HUD may release owners from the Use Agreement, and strongly urged HUD to develop guidelines about when and how it will release owners from the Use Agreement, in order to ensure the long-term affordability of RAD properties. The commenter stated that the absence of guidelines governing HUD's discretion to approve exceptions to the automatic renewal of Use Agreement terms, as HAP Contracts are extended, raises risks to the long-term affordability of a development. The commenter strongly urged HUD to develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties.

HUD Response: HUD will further consider this request for more guidelines.

RAD Use Agreement—Affordability of Rents at Termination

A commenter urged HUD to require deeper affordability for rents for assisted units if the HAP Contract is terminated. The commenter stated that currently, where the HAP Contract is terminated by HUD or an administrator for breach, the Use Agreement only requires that new tenants have incomes at or below 80 percent of Area Median Income at admission and rents must not exceed 30 percent of 80 percent of AMI for an appropriate-sized unit. This weak restriction contrasts sharply with the 30 percent of actual tenant income standard applicable to public housing and Section 8, is virtually meaningless because rents do not generally reach that level in most rental housing markets, and is waivable. The commenter stated that this means that the Use Agreement currently depends primarily upon the existence of the HAP Contract for its vitality, and that in case of HAP Contract termination deeper affordability restrictions should be incorporated into the Use Agreement in order to truly ensure long-term affordability. The commenter also stated that, if the project owner fails to rent a sufficient percentage of assisted units to low-income or very low-income tenants, HUD should not, in its sole discretion, reduce the number of units covered by the HAP Contract. The commenter stated that this action by HUD would fail to preserve the vital, long-term affordability of the property and would not properly sanction the property owner for failing to abide by the HAP Contract. The commenter concluded its comment on this subject by stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: HUD appreciates the commenters concerns. In setting requirements, HUD must balance several interests in order to provide for long term affordability. HUD believes the current provisions strike the appropriate balance.

Project-Based Rental Assistance (PBRA) Housing Assistance Payments Contract Part I and Part II (First Component)

Section 1.2(d): The commenter noted that Section 1.7.A.10 of the RAD Notice provides the owner the right to terminate the HAP if HUD determines that a statutory change affecting the rents will threaten the physical viability of the property. The commenter then noted that the changes to Section 1.2(d) of the HAP provide both the Contract Administrator and the Owner the ability to terminate the HAP, individually. The commenter indicated that owners, lenders, and LIHTC investors have expressed concern over this unilateral decision making authority of the Contract Administrator, especially if the only issue is the inability to comply with Section 2.8 of the HAP (the required OCAF requirements). The commenter also noted that the revised HAP language does not capture the levels of impact regarding the statutory change in the RAD Notice. The commenter indicated that the RAD Notice provides that HUD will determine whether the statutory change will threaten the physical viability of the project, while the proposed HAP language merely states that the statutory change is inconsistent with Section 2.5(a)(1) and 2.8 of the HAP. To be consistent with the RAD Notice, the commenter provided revised language.

HUD Response: The language in this section of the HAP contract mirrors the language used for other HAP contracts in use in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The language does not give HUD an unfettered ability to terminate the HAP contract. The language states that, should HUD determine that a statutory change prohibits the Contract Administrator from being able to comply with the funding provisions of section 2.5(a)(1) or 2.8 of the HAP Contract, then HUD may terminate the contract. Therefore, the provision gives HUD the ability to terminate the contract only in those instances where a statutory change prohibits the Contract Administrator from complying with the funding provisions of the contract. HUD has maintained the consistency between this contract and the MAHRA contracts.

Section 1.3(b)(1): The commenter requested clarification as to what the phrase "[a]t the end of the calendar year, HUD will provide the Owner written notification of the amount of such funding" means. The commenter indicated that it is unclear to which funding this language is referring to. The commenter noted that if this language is referring to "any additional public housing amounts that HUD obligates," then HUD would also have to deposit those funds with the PHA and direct the PHA to pay them to the Owner in addition to the funds identified through the Initial Year Funding Tool. The commenter requested additional clarification regarding the calendar year at the end of which HUD will provide written notification—at either the calendar year prior to or after closing. The commenter notes that if the intent is to do a reconciliation with the Owner at the end of the initial year, then such intent should be more clearly stated and instruction provided by the PHA and Owner.

HUD Response: HUD agrees with the commenter that this provision was confusing and has revised the language to clarify the intent. The language refers to the fact that during the year of conversion, a project is funded only from obligated public housing funds, which may not equal the amount of the amount of contract rents, adjusted with an operating cost adjustment factor that the owner will receive in later years of the contract. The language relating to public housing amounts obligated later in the calendar year refers to the fact that depending on the month a conversion occurs HUD may have obligated only part of the public housing funds due to the property for that fiscal year. HUD makes its public housing obligations pursuant to formula. If HUD were to obligate such additional funds and a PHA were to receive such additional funds, the funds received corresponding to the converting project would be used with the originally obligated funds for funding the converted project for the remainder of the calendar year.

Section 1.3(b)(2): A commenter stated that this paragraph is very confusing and difficult to follow, and suggested that HUD look at adding clarity to this language, perhaps by inserting the terms "Year of Conversion" and "First Full Year".

HUD Response: HUD has revised the language to reflect the funding documents.

Section 1.4(d): A commenter stated that HUD may consider adding the initial repairs as an exhibit to the HAP Contract for consistency.

HUD Response: Exhibit F to the RCC, which is a legally binding contract between the owner and HUD, already contains this information.

Section 2.5: A commenter stated that clarification is needed that the Year of Conversion funding can be comprised of three different types of payments—HAP Payments, RAD Rehab Assistance Payments and Vacancy Payments. The commenter stated that the added language in these sections does not indicate that the amount of funding in the Year of Conversion will equal each of these, but rather the three items combined should not exceed the amount of funding available during the Year of Conversion. The commenter requested that HUD review its markup of this section. The commenter also stated that, with respect to the RAD

Rehab Assistance Payment, it is the commenter's understanding that units are eligible for that payment in the Year of Conversion; however, the new language indicates that no RAD Rehab Assistance Payments will be paid until the First Full Year. The commenter stated that it believed that this is not what HUD intended and asked HUD to look at its markup of this section.

HUD Response: HUD has considered these suggestions and made revisions concerning the amount of funding in the Year of Conversion and RAD Rehab Assistance Payment.

Section 2.5(b): A commenter requested that HUD reconsider requiring a date certain by which the RAD Rehab Assistance Payments must end and instead suggested they be tied to the completion of the Initial Repairs. The commenter also suggested that HUD consider eliminating the RAD Rehab Assistance Payment as a separate line item and instead allow this subsidy to be paid as a vacancy payment. The commenter stated that it believed that this would simplify budgeting and accounting for both HUD and owners. Another commenter provided two technical changes to this section.

HUD Response: With regard to allowing RAD Rehab Assistance Payments to be paid as a vacancy payment, HUD rejects this comment on the basis that Rehab Assistance Payments do not meet the legal requirements established in section 2.5(b) and (c) of the contract and in 24 CFR 880.611 for the receipt of vacancy payments. Whether to leave the provision intact in section 2.5(b) of the contract imposing a date certain on which Rehab Assistance Payments will cease, or instead to link their cessation to the completion of the initial repairs as the commenter urges, is a policy matter. Regarding both comments, these requirements are tied to the RAD Notice so, regardless, HUD will not change them. HUD accepts the two technical changes to the first sentence.

Section 2.7(c)—Replacement Reserve: A commenter suggested several changes to this section to better align it with the other RAD requirements and industry practice. The commenter stated that the current provisions do not match up with the requirements being imposed upon non-RAD HAP Contracts and in some instances directly conflict with the RAD Notice. The commenter urged HUD to issue additional guidance on this topic and ensure that its requirements are consistent.

The commenter commented on section 2.7(c)(1), stating that the deposit to the replacement reserve is not addressed in any of the applicable regulations, but rather is set in the RCC. The commenter suggested a change for clarity.

The commenter commented on 2.7(c)(1)(i), stating that this section addresses the escalation factor for the replacement reserve and references an automatic adjustment factor (AAF) and 24 CFR part 888. The commenter suggested that HUD revise this paragraph to align with the requirements of the RAD Notice and current practice with respect to escalations. The commenter stated that most deals have a replacement reserve escalator that is required by an investor or a lender. The commenter stated that moreover, the current practice for most PBCAs is to require that the replacement reserve be adjusted by OCAF, not the AAF. The commenter stated that none of the other RAD Guidance applies an AAF or part 888 to the RAD Program and the part 880 regulations as amended to apply to the RAD program similarly do not reference an AAF or part 888. The commenter therefore recommended that an approved escalation factor be included in the RCC and referenced in the HAP Contract, or at least a general "approved by HUD" reference added.

The commenter also commented on section 2.7(c)(1)(v), stating that it is not aware of any HUD procedures with respect to obtaining HUD approval for use of the replacement reserve. The commenter stated that it does not seem to be required by the RAD Notice or RCC and the commenter suggested deleting this requirement, or alternatively publishing guidance as to how and when these approvals can be obtained.

The commenter also commented on section 2.7(c)(2) stating that this directly contradicts the RAD Notice, which says that the FHA Regulatory Agreement shall apply. The commenter requested that HUD revise for consistency.

HUD Response: HUD agrees with the commenter in part and has revised section 2.7(c) to clarify requirements.

Section 2.9 Marketing and Leasing of Units: A commenter suggested several changes in a markup intended to achieve conformance with the RAD Notice and underlying regulations.

HUD Response: HUD accepts the proposed revision to section 2.9(c)(3) of the contract as it provides useful clarification. The proposed change to section 2.9(c)(5)(ii) is rejected on the basis that the phrase the commenter urges HUD to replace, "total housing expense," even though it is not a defined term, is used historically in project-based section 8 HAP Contracts.

Section 2.11 Reduction of Number of Units for Failure To Lease to Eligible Families: A commenter stated that if the project owner fails for a continuous period of 6 months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD should not reduce the number of units covered by the HAP Contract (Part II, page 7). The commenter stated that such action by HUD would fail to preserve the vital, long-term affordability of the property and does not properly sanction the property owner for failing to abide by the HAP Contract. The commenter urged HUD to amend the PBRA model lease, and require its use at all RAD properties nationwide, to include the key tenant protections under the RAD program (*i.e.*, the right to remain/return, no rescreening upon conversion, lease renewals, phase-in of tenant rent increases, relocation assistance, tenant participation, tenant grievance procedures, and choice mobility). The commenter stated that this would help to eliminate the wide variety of terms and formats of RAD property owner leases (Part II, page 6). The commenter also stated that any reports that are required by HUD or the PHA should also be required to be made available upon request and notification to current tenants (Part II, page 9), and that the HAP Contract should also require an investigation by HUD or the Contract Administrator if more than 20 percent of the current tenants, or the tenant organization, submit a request for such an investigation to the property owner, PHA, or HUD regarding issues relating to tenant participation or their living environment.

HUD Response: HUD's authority under section 2.11(b) is discretionary, not mandatory, and has regulatory backing in 24 CFR 880.504(b)(ii). On this basis, HUD rejects this comment. Whether to amend the model lease to include the key tenant protections of Component 1 is a policy matter. However, section 1.7.B.6. of the RAD Notice already requires that the majority of tenant protections to which the commenter refers be included in the House Rules, which must be attached to the model lease; therefore, no revisions to the HAP Contract have been made. Tenant's interests in participation in multifamily housing projects are adequately protected in 24 CFR part 245, which does not require that any reports that are subject to section 2.16 of the contract be made available to them. On this basis, HUD rejects these comments and further notes that 24 CFR part 245 does not require that tenants be afforded a right to request an investigation.

Section 2.12(b): A commenter stated that this paragraph is overly broad and vague and HUD's underlying concern is adequately addressed in other sections. The commenter stated that the owner is required to comply with both the Fair Housing Act as well as Title VI and so is already prohibited from unlawful discrimination. The commenter stated that while this paragraph was included in the original PBRA HAP Contracts, the landscape of civil rights has changed dramatically in the past 35 years, and that leaving such terms undefined in today's fair housing and non-discrimination landscape is very concerning. The commenter stated that a strict reading of this could put the Owner in violation of the HAP Contract for excluding high-income persons from participation under the HAP Contract, since under the broad undefined meaning of the word "class," high-income individuals could qualify. The commenter stated that while this example is certainly absurd given the purpose of the document there are other examples that are just as problematic when a charged term such as "class" is left open-ended. The commenter stated that HUD should, and should allow owners to, rely upon the existing laws, regulations and other guidance that exists with respect to non-discrimination in federally subsidized housing to define protected classes and set forth the obligations on nondiscrimination.

HUD Response: The comment urging the deletion of section 2.12(b) is accepted.

Section 2.14: A commenter stated that it agrees that restoration should be required; however, the commenter stated that additional language regarding feasibility of restoration, beyond simply "to the extent proceeds permit" is advisable. The commenter stated that most lenders have a process or procedure for determining feasibility that will likely conflict with this sentence. The commenter recommended that HUD look to the Mixed Finance ACC Amendment currently in use for the public housing program as a model.

HUD Response: HUD has amended this section informed by the comment.

Section 2.20—Assignment, Sale, Foreclosure, or Deed in Lieu of Foreclosure: A commenter stated that the provisions of this section do not line up with current HUD requirements in Chapter 13 of Handbook 4350.1, which discusses when HUD consent is required for a transfer. The commenter stated that these requirements should be consistent and more importantly should facilitate transfers that are customary of limited partner interests in tax credit projects. The commenter stated that the 2530 previous participation process also recognizes that it does not need to give clearance to limited investor partners or members, but rather allows such entities to file limited liability corporate investor certifications (LLCI). The commenter stated that it believes that this section should be updated to reference the LLC corporate form which many RAD owners take. The commenter stated that this section should note the exceptions that are now contained in Sections 2.24 and 2.25 (which were previously the Lender and Investor riders to the HAP Contract).

HUD Response: HUD has clarified the requirements in this section.

Section 2.24(a): The commenter suggested HUD replace "against the project" with "encumbering the property on which the project is located." The commenter also suggested that subsections be added to Section 2.24 to provide the holder of any HUD-approved mortgage with the same notice and cure rights that are provided the Equity Investor in Sections 2.25(a) and (b).

HUD Response: HUD accepts these technical revisions.

Section 2.25(c) and (d): The commenter noted that the HUD required language for partnership agreements states that no transfer in the general partner is permitted without the prior written consent of HUD. They suggested that HUD revise the required language to be included in partnership agreements to be consistent with Section 2.25(c) and (d). The commenter also requested that the HUD required language for partnership agreements be posted online.

HUD Response: HUD agrees with the comment pertaining to the interplay between section 2.25 and the HUD required provisions relating to ownership and control that are inserted into limited partnership agreements (LPAs) and operating agreements. HUD will be updating these HUD-required provisions.

Third party beneficiary concerns: The commenter stated that HUD should remove the exclusion of third party beneficiary rights from the HAP Contract, and instead provide that a family that is eligible for housing assistance under the HAP Contract should be a third party beneficiary of the HAP Contract. The commenter stated that this change would drastically improve enforcement, and reduce HUD's administrative burdens, in enforcing the terms of the contract, and that making this change would also closely align with the RAD Use Agreement, which allows any eligible tenant or applicant for occupancy within the project, in addition to the HUD Secretary or his or her successors or delegates, to institute proper legal action to enforce performance of its provisions. The commenter stated that it is critical that tenants have a tool to access justice in order to preserve their tenancy and ensure the long-term affordability of their property after RAD conversion.

HUD Response: HUD rejects the comment suggesting that assisted families be made third-party beneficiaries to the contract.

A commenter encouraged HUD to revise all references to Notice PIH 2012–32 (HA) to reference Notice PIH 2012–32 (HA) (REV–2) and all subsequent revisions to the RAD program through applicable statutes, regulations, and policies.

HUD Response: HUD agrees and has made changes to section 1.2(c).

A commenter suggested that the HAP Contract should specify that RAD projects are also subject to the fair housing laws and definitions of protected classes under state and local law.

HUD Response: The contract has been revised to require compliance with all applicable civil rights laws, including fair housing laws. However, HUD has no legal duty or authority to enforce state or local laws.

A commenter stated that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: This contract is a form document minimally tailored to the specific situation. Further, it is a contract between HUD and the owner. Neither tenants nor tenant advocacy groups are parties to or third-party beneficiaries of the contract. HUD rejects the comment, but emphasizes that PHAs must provide sufficient detail about proposed RAD projects in their PHA or MTW plans, including information about tenant contributions to rent and tenant protections.

Project-Based Voucher (PBV) Rider to PBV HAP Contract (First Component)

First Component: A commenter noted that most references are to "HAP Contract," but some places only use "Contract," and that the document should be consistent throughout. The commenter suggested using "HAP Contract" throughout.

HUD Response: HUD has changed all references to "HAP Contract".

Section 3(g)—Revising Section 4—Funding of HAP Contract: A commenter stated that it believes that HUD could further clarify this section using the new terms. They indicated this in an attached markup. The commenter stated that the section numbering is very confusing, particularly the insertion of a new Section 4(a) and 4(b) via Section 3(g)—but without identifying or otherwise signifying that Section 4 is part of Section 3. The commenter asked HUD to revisit the formatting.

HUD Response: HUD accepts these changes and made appropriate amendments to the funding language and numbering.

Section 3(j)(3): A commenter stated that the last sentence should read ". . . successor provisions whether or not explicitly stated."

HUD Response: HUD accepts this suggested change.

Section 3(r): A commenter stated that this section duplicates the updated PBV Regulations, and asked that HUD remove this section.

HUD Response: HUD rejects the suggested change. The Rider language is essential because the underlying PBV HAP Contract has yet to incorporate the regulatory change. Therefore, the Rider needs to reflect the current requirement, which protects tenants by preventing non-renewal of a lease unless the owner has a good cause.

Section 3(s): A commenter asked that HUD revise Section 10.4.b (PHA owned units) to cover only inspections. The commenter stated that PHA owned units are any units in which a PHA is in the ownership structure (even if only as a special limited partner). The commenter stated that the Rider requires PHA-owned units to follow 24 CFR 983.59, but that the section states that rents for PHA owned units must be determined by an independent third party approved by HUD. The commenter stated that in RAD, HUD sets the initial rents and inflates by OCAF, and an independent third party adds an expense and administrative burden to the project while having no power to override HUD's own calculations.

HUD Response: HUD rejects this comment. The RAD Notice requires a rent reasonableness review, which would have to be done by an independent entity.

Section 3(v)—Revising Subsection 21.a.2: A commenter stated that this section should be limited to new liens on the property.

HUD Response: HUD accepts this suggestion.

Section 4(a): A commenter stated that clarity is needed with respect to the new language added to this section. The commenter stated that its understanding is that in the Year of Conversion that the funding may be made up of three sources—HAP payments, vacancy payments, and Rehab Assistance Payments. The commenter stated that the sum of these sources cannot exceed the public housing funds previously obligated to the project, but the language as written indicates that no Rehab Assistance Payments will be made in the Year of Conversion. The commenter stated that this is not how the deals have been underwritten so far and this should be clarified. The commenter also suggested that HUD consider eliminating the RAD Rehab Assistance Payment as a separate item and instead make it a vacancy payment.

Another commenter noted that, assuming the language will mirror Section 2.5(b) of the PBRA HAP, HUD should replace "has not received" with "is not otherwise receiving."

HUD Response: HUD has clarified this section in response to these comments. With regard to eliminating the RAD Rehab Assistance Payment as a separate item, and instead make it a vacancy payment, HUD rejects this suggestion. The Rehab Assistance Payment is not a vacancy payment. HUD agrees with commenter's technical comment and made the change to "is not otherwise receiving."

Section 4(b): A commenter asked that HUD delete this requirement to have the PHA board approve the PBV operating budget. The commenter stated that this is not required for regular PBV, PHA Owned PBRA projects, or any non-public housing projects and should not be required in this context. The commenter stated that this is not a function that the board normally performs and is more appropriately delegated to the staff hired to run the operations of the PHA. The commenter stated that this requirement is burdensome to the PHA boards and requires the directors, who may not have any particular expertise in operations, to insert themselves in an inappropriate and unhelpful way.

HUD Response: This is a specific requirement in Section 1.6.D.2 of the RAD Notice. The Rider simply reflects the RAD Notice.

Section 4(c): A commenter suggested that additional language regarding feasibility of restoration, beyond simply "to the extent proceeds permit" be added. The commenter stated that most lenders have a process or procedure for determining feasibility that will likely conflict with this sentence. The commenter recommended that HUD look to the Mixed Finance ACC Amendment currently in use for the public housing program as a model.

HUD Response: HUD has amended this section informed by the comment.

Section 4(e): A commenter stated that the citation to 1.B.2.B is confusing and asked HUD to consider revising to 1.B.2.B.

HUD Response: HUD accepts this suggestion.

Section 4(g): A commenter stated the language in this section is far too general, and the language should describe specific requirements, cite to the regulatory source of requirements, or cross-reference to the RCC.

HUD Response: HUD accepts this suggestion, and has cross-referenced the RCC.

Transfer of a contract or project: A commenter urged HUD to require the RAD property owner to receive express written approval from HUD in order to transfer the contract or the project, which is required under the RAD PBRA HAP Contract, because such fundamental alterations should be part of HUD's important nationwide oversight role. The commenter stated that currently, the PBV HAP Contract only requires approval in "accordance with HUD requirements." The commenter stated that HUD should have stronger protections for transfers of member interests in ownership entities utilizing Low Income Housing Tax Credits. Transfer of investor members/partners is not considered a default under the HAP Contract or Use Agreement if HUD receives both prior written notice and copies of documents regarding transfer. The commenter stated that instead, HUD should have a requirement for prior written approval from HUD before owners can transfer these interests, which is currently required under the RAD PBRA HAP Contract.

HUD Response: The underlying PBV HAP Contract (Form 525030A (Part 1) and Form 525030B (Part 2)) requires in Section 21 that the owner receive "written consent" of the PHA prior to transferring the HAP Contract or property. Section 4(t) of the Rider specifically adds a requirement for HUD consent respect to Section 21. In other words, just as the commenter suggests, HUD's written consent is required. With respect to the provisions relating to transfers of interests in the ownership entities, HUD has reviewed and revised these provisions in response to this and similar comments.

A commenter stated that for RAD PBRA properties, the HAP Contract continues in existence in the event of any disposition of the project or foreclosure, unless HUD uses its discretion to approve otherwise. The commenter stated that it greatly supports this strong protection of long-term affordability of RAD properties, and urged HUD to require the same for RAD PBV properties, or at the very least, develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties.

HUD Response: HUD agrees and has added modified language from section 2.20(f) of the PBRA HAP Contract to the PBV Rider (which adds a new section 38 to the HAP Contract).

A commenter urged HUD to clarify how tenants will be protected in the event of foreclosure, bankruptcy, transfer of assistance, or substantial default. The commenter questioned whether the HAP Contract and subsidy could be quickly transferred to another owner or to another building, and that, if necessary, would current tenants receive tenant protection vouchers and relocation assistance? The commenter further stated that PBRA HAP Contract provisions are more explicit and protective of tenants than the PBV HAP Contract regarding the provision of replacement housing assistance, and urged HUD to include similar strong tenant protections in the PBV HAP Contract as well. The commenter concluded its comment on this issue by stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: As discussed above, HUD has decided to add language regarding continuation of the HAP Contract in a new section 38. With respect to transfer policy and tenant protections, these policies are properly addressed through RAD Notices and guidance, not contractual language. The suggestion regarding tenant input and the availability of documents is also not relevant to contractual modifications. These issues will be addressed in RAD Notices and guidance. Regardless, the Rider would not be modified by tenant input. It is a HUD form that must be used verbatim. Any changes to the form must be approved by HUD.

Sections 6 and 7: A commenter suggested that subsections be added to Section 6 to provide the holder of any HUD-approved mortgage with the same notice and cure rights that are provided the Equity Investor in Sections 7(a) and (b). The commenter suggested that prior to these two sections, language should be added similar to that found in throughout Section 4 to clarify that new sections are being added to the HAP. Additionally, the commenter suggested that "Owner" be capitalized throughout the two sections.

HUD Response: HUD has declined to make the change to provide notice to the mortgage holder because unlike the equity investor, the mortgage holder is not participating in the organizational structure of the ownership entity. HUD believes the added lender provisions are adequate to address lender concerns. Regarding the technical revision, HUD has revised the document accordingly.

Section 29—Contract Administrator Board of Approval: A commenter commented on Section 29, Contract Administrator (CA) Board of Approval. The commenter stated that the requirement that the contract administrator's board must approve the operating budget for the covered project is onerous and not in line with other HUD Programs. The commenter stated that this is not required by HUD in other similar contexts including PBV, PBRA or Mixed-Finance and simply adds an additional layer of process and expense. The commenter stated that a PHA can set up its own internal policies to have its board review the operating budget if it so wishes, but this should be on a voluntary basis, and therefore HUD should eliminate Section 29.

HUD Response: This is a specific requirement in Section 1.6.D.2 of the RAD Notice. The Rider simply reflects the RAD Notice.

Extraneous Administrative Procedures: A commenter commented on what it referred to as extraneous administrative procedures in the PBV Contract Rider. The commenter stated that the PBV Contract Rider should take additional steps to remove unnecessary PBV administrative procedures that are not relevant for RAD, and provided, as an example, that the rider should explicitly exempt RAD properties from annual rent confirmation studies. The commenter stated that since rents are set by formula this is not relevant and simply adds additional expense and administrative procedure. The commenter recommended that HUD eliminate annual rent confirmation study requirement for RAD.

HUD Response: The RAD Notice at Section 1.6.B.6 specifically requires that rent reasonableness continue to be performed. This is a distinct requirement, apart from any OCAF adjustment.

PBRA Housing Assistance Payments Contract Part I and Part II (Second Component—Mod Rehab, Rent Supp, and RAP Properties)

The commenter stated that HUD should take steps to reevaluate the length of the owner's commitment under Second Component conversions to align with the mandatory HAP Contract renewal requirements of the First Component. The commenter stated that, for example, as stated in the PBRA Housing Assistance Payments Contract for the RAD First Component conversions: "The Owner acknowledges and agrees that upon expiration of the initial term of the Contract, and upon expiration of each renewal term of the Contract, the Owner shall accept each offer to renew the Contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal." The commenter stated that the current PBRA HAP Contract for the RAD Second Component conversions only mentions each renewal term in accordance with the HAP Contract, RAD Notice, all statutory requirements, and all HUD regulations and other requirements. The commenter further stated that in order to ensure clarity and long-term affordability of the converted RAD Second Component property, HUD should explicitly state the language quoted above.

HUD Response: HUD rejects the comment that suggests HUD take steps to reevaluate the length of the owner's commitment under Second Component conversions on the basis that owners of section 8 projects converted under Component Two have a right under section 8(c)(8)(A) of the United States Housing Act of 1937 to opt out of the section 8 program at the end of the initial term or of any renewal term.

Two commenters made the same suggestions for Component 2 as they did for Component 1 regarding amendments to the PBRA model lease, availability of reports that are required by HUD or by the PHA, and investigations by HUD or the Contract Administrator.

HUD Response: HUD's takes the same position on these Component 2 comments as it did for identical comments to Components 1 described above.

Section 2.1(d): A commenter suggested that HUD replace "the preceding sentence" with "Section 2.1(c)."

HUD Response: This technical correction, which HUD accepts and has made, concerns only the PBRA HAP Contract for Conversions of Moderate Rehabilitation.

Project-Based Voucher (PBV) Rider to Existing PBV HAP Contract (Second Component)

A commenter stated that similar to the language that is on page 6 of the PBV Rider for RAD First Component properties, the commenter urges HUD to incorporate tenant participation rights into this Second Component rider that protects tenants' right to participate and receive funding for legitimate resident organizations. The commenter stated that this language should reflect the language and rights discussed in Attachment 1B of the RAD Notice. The commenter stated that although the RAD Notice does not explicitly discuss RAD Component 2 tenants' participation rights, these rights are independent rights that exist in the PBV program including and beyond RAD conversions. The commenter further stated that, for RAD PBRA properties, the HAP Contract continues in existence in the event of any disposition of the project or foreclosure, unless HUD uses its discretion to approve otherwise. The commenter added that it greatly supports this strong protection of long-term affordability of RAD properties, and urged HUD to require the same for RAD PBV properties, or at the very least, develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties. The commenter concluded its statement on this subject by stating that HUD should require PHAs to seek input from and make this document available to tenants and local advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: The comment regarding tenant participation rights is inaccurate. The PBV program does not provide for funding for tenant organizations. The RAD Notice limits the requirement to Component 1 and this requirement is imposed pursuant to the statutory language governing Component 1. HUD rejects the second comment requiring the HAP Contract in RAD PBV properties to continue in the existence in the event of any disposition of the project or foreclosure. There are special considerations in Component 1 that are not present in Component 2. Component 2 is generally designed to follow the regular PBV program. Consistent with the special considerations under Component 1 the Rider imposes many provisions that differ from regular PBV. It is important to note that PHAs, not HUD, make most of the major policy determinations regarding PBV under both the regular PBV program and Component 2. HUD will consider this issue prospectively. The suggestion regarding tenant input and the availability of documents is also not relevant to contractual modifications. These issues will be addressed in RAD Notices and guidance. Regardless, the Rider would not be modified by tenant input. It is a HUD form that must be used verbatim. Any changes to the form must be approved by HUD.

Income Mixing: A commenter stated that, the RAD Component 2 PBV rider, section 4F, regarding income mixing, provides "the excepted unit provisions in the PBV regulations generally apply to RAD projects" and then mentions the supportive services exceptions. The commenter asked whether this language is referring to the RAD Notice statement that "an owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families eligible to receive supportive services, or are within single-family properties," and, if so, it would be helpful to the reader if the section includes a description of the exception.

HUD Response: The Rider provision in question refers to both the statutory and regulatory provision on income mixing. Those provisions clearly state the income mixing requirements. The purpose of the Rider provision is to simply state the modifications to these requirements, as detailed in Sections 2.5.C. and 3.5.C. of the RAD Notice. The suggestion is rejected.

Suggested Edits to RAD Closing Documents

The following commenters, 0021–0005, 0021–0006, and 0021–0007, offered specific language to the RAD closing documents.

HUD Response: HUD greatly appreciates all of these drafting suggestions and has incorporated many of them as described in this notice.

IV. Evaluation of Proposed Information Collection

A. Overview of Information Collection

Title of Information Collection: Rental Assistance Demonstration (RAD) Documents.

OMB Approval Number: 2502–0612.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Rental Assistance Demonstration (RAD) allows Public Housing, Moderate Rehabilitation (MR), Rent Supplement (RS), and Rental Assistance Payment (RAP) properties to convert to long-term project-based Section 8 rental assistance contracts. Participation in the demonstration is voluntary.

Participating Public Housing Agencies (PHAs) and Multifamily Owners are required to submit documentation for the purpose of processing and completing the conversion. Through these documents (collectively, the RAD documents), HUD evaluates whether the PHA or owner has met all of the requirements necessary to complete conversion as outlined in the RAD Notice.

The RAD processing request is made through a Web-based portal. Overall, the RAD documents and information requested through such documents allow HUD to determine which applicants continue to meet the eligibility and conversion requirements. Finally, all applicants will be required to sign the appropriate contractual documents to complete conversion and bind both the applicant and HUD, as well as set forth the rights and duties of the applicant and HUD, with respect to the converted project and any payments under that project.

Respondents: State, Local or Tribal Government entities, Public Housing Agencies and multifamily owners.

Information collection	Number of respondents	Annual responses	Total responses	Burden hours per response	Total burden hours	Salary (per hour)	Total burden cost
PBV HAP Contract Rider—Public Housing Conversions	250	1	250	1	250	$41	$10,250.00
PBRA HAP Contract—Public Housing Conversions Parts I + II	250	1	250	1	250	41	10,250.00
RAD Use Agreement	500	1	500	1	500	41	20,500.00
RCC	500	1	500	1	500	41	20,500.00
Financing Plan (including Accessibility and Relocation Plan Checklist)	500	1	500	10	5000	41	205,000.00
PBRA HAP Contract—Mod Rehab Conversions Parts I & II	35	1	35	1	35	41	1,435.00
PBRA HAP Contract—Rent Supp and RAP Conversions Parts I & II	35	1	35	1	35	41	1,435.00

Information collection	Number of respondents	Annual responses	Total responses	Burden hours per response	Total burden hours	Salary (per hour)	Total burden cost
PBV Existing Housing HAP Contract Rider—Mod Rehab, Rent Supp, RAP (second component rider)	70	1	70	1	70	41	2,870.00
Totals	2,140	....	2,140	....	6,640.00	....	272,240.00

B. Solicitation of Comment

HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility and clarity of information to be collected; and,

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.* permitting electronic submission of responses.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

The documents that currently comprise the RAD documents can be viewed at the RAD Web site: *www.hud.gov/rad/.* These documents are those that are currently used for RAD processing.

Dated: September 23, 2016.

Inez C. Downs,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–23438 Filed 9–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12100000.MD0000 17XL1109AF]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (DAC) will meet as indicated below.

DATES: The next meeting of the BLM's California DAC will be held October 14–15, 2016. The council will participate in a FLPMA 40th Anniversary celebration in lieu of a field tour of BLM-administered public lands on Friday, October 14, 2016. The celebration will be held at the Santa Rosa and San Jacinto Mountains National Monument Visitor Center in Palm Desert, CA. Specific details regarding the celebration will be posted on the DAC Web page at *http://www.blm.gov/ca/st/en/info/rac/dac.html* when finalized. On Saturday, October 15, 2016, the DAC will meet in formal session from 8:00 a.m. to 5:00 p.m. at the University of California, Riverside Extension Center, Conference Rooms D–E, located at 1200 University Avenue, Riverside, CA. Members of the public are welcome. The final agenda for the Saturday public meeting will be posted on the DAC Web page at *http://www.blm.gov/ca/st/en/info/rac/dac.html* when finalized.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs, 1–951–697–5217. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management on BLM-administered lands in the California desert. The agenda will include time for public comment at the beginning and end of the meeting, as well as during various presentations.

While the Saturday meeting is tentatively scheduled from 8:00 a.m. to 5:00 p.m., the meeting could conclude prior to 5:00 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly. The agenda for the Saturday meeting will include updates by council members, the BLM California Desert District Manager, five Field Managers, and council subgroups. Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553.

Written comments will also be accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

Dated: September 21, 2016.

Gabriel R. Garcia,

California Desert District Manager, Acting.

[FR Doc. 2016–23344 Filed 9–27–16; 8:45 am]

BILLING CODE 4310–40–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Charter of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the charter of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Patrick McDonough, Executive Director, Joint Board for the Enrollment of Actuaries, at *nhqjbea@irs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee on Examinations (Advisory Committee) is to advise the Joint Board for the Enrollment of Actuaries (Joint Board) on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974.

The Advisory Committee's functions include, but are not necessarily limited to, considering and recommending examination topics, developing examination questions, recommending proposed examinations and pass marks, and as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 20, 2016.

Chet Andrzejewski,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2016–23416 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 22, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of North Carolina in the lawsuit entitled *United States* v. *North Georgia Electric Membership Corporation et al.,* Civil Action No. 5:16–cv–00820–FL.

The United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), filed this lawsuit under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The complaint, which names 173 parties as defendants, seeks performance of a remedial design and remedial action at the Ward Transformer Superfund Site in Raleigh, North Carolina, along with the recovery of costs that the United States incurred for response activities undertaken at the Site. The proposed consent decree requires the 173 defendants to fund and perform the remedial action that EPA selected for Operable Unit 1 of the Site. In return, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA relating to the Site. The proposed consent decree also requires the United States, on behalf of the Army, Air Force, and Navy, and the Tennessee Valley Authority to fund a portion of the remedial action, and requires settling defendant Carr & Duff, Inc., to pay a $40,000 civil penalty in connection with its failure to comply with a 2011 cleanup order issued by EPA.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *North Georgia Electric Membership Corporation et al.,* D.J. Ref. No. 90–11–2–07152/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $125.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without signature pages or Appendix F (Operable Unit 1 Record of Decision), the cost is $19.25.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–23386 Filed 9–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation and Settlement Agreement Under the Clean Air Act

On September 19, 2016, the Department of Justice lodged a proposed Stipulation and Settlement Agreement with the United States District Court for the Central District of California in the lawsuit entitled *United States* v. *Goldenvale, Inc.,* Civil Action No. 5:16–CV–443.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for the importation and sale of highway motorcycles and recreational vehicles in violation of certification and labeling requirements of the Clean Air Act and its regulations. The settlement agreement requires the defendant to pay a civil penalty of $150,000 (which amount was based on an assessment of ability to pay) and prohibits the defendant from importing any vehicles unless they first enter into a compliance plan with the Environmental Protection Agency.

The publication of this notice opens a period for public comment on the settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Goldenvale, Inc.,* D.J. Ref. No. 90–5–2–1–10415. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the settlement agreement may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the settlement agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Karen S. Dworkin,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 2016–23328 Filed 9–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), and the Oil Pollution Act (OPA)

On September 22, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District Washington in the lawsuit entitled *United States of America et al.* v. *City* *of Seattle*, Civil Action No. 16–1486 (W.D. Wa.)

The complaint asserts claims for natural resource damages by the United States on behalf of the National Oceanic and Atmospheric Administration and the Department of the Interior; the State of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe (the Natural Resource Trustees) pursuant to the section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a); section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321; section 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. 2702(b); and the Washington Model Toxics Control Act (MTCA), RCW 70.105D.

The proposed consent decree settles claims for natural resource damages caused by hazardous substances released from City of Seattle facilities along the Duwamish Waterway. Under the proposed consent decree, the City of Seattle will purchase restoration credits in projects approved by the Natural Resource Trustees to create habitat for injured natural resources, including various species of fish and birds. The City of Seattle also will establish conservation easements on a number of parcels along the Lower Duwamish Waterway to ensure that restoration projects constructed on those parcels are preserved, and the City will pay approximately $91,000 of the Trustees' damage assessment costs. The City will also pay Bluefield Holdings, Inc., to operate and maintain a restoration project under the Trustees' oversight, and Bluefield will reimburse the Trustees' future oversight costs for this project. The Natural Resource Trustees will provide the City of Seattle with covenants not to sue under the statutes listed in the complaint and proposed consent decree for specified natural resource damages.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America et al.* v. *City of Seattle*, D.J. Ref. No. 90–11–3–07227/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $54.00 (25 cents per page reproduction cost) payable to the United States Treasury. Alternatively, to obtain a copy of only the main body of the proposed consent decree, excluding appendices, please enclose a check or money order for $19.50.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–23378 Filed 9–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On September 21, 2016, a proposed consent decree was lodged with the United States District Court for the District of Montana in the lawsuit entitled *United States and the State of Montana.* v. *ExxonMobil Pipeline Company,* Civil Action No. 1:16–cv–00143–SPW–CSO.

The United States and the State of Montana filed this lawsuit against ExxonMobil Pipeline Company ("ExxonMobil") pursuant to the Oil Pollution Act, 33 U.S.C. 2701–2762, and state law. The United States' and State of Montana's complaint seeks to recover damages for injury to, destruction of, loss of, or loss of use of natural resources resulting from the discharge of oil from the ExxonMobil's Silvertip Pipeline into the Yellowstone River near Laurel, Montana on or about July 1, 2011. The proposed consent decree requires ExxonMobil to pay $12,000,000 to resolve the United States' and the State of Montana's claim for natural resource damages.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Montana* v. *ExxonMobil Pipeline Company,* D.J. Ref. No. 90–5–1–1–10332. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail in the following manner:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.25 (25 cents per page reproduction cost) payable to the United States Treasury.

For informational purposes, the Justice Department notes that the Department of the Interior and the State of Montana have prepared a related draft Restoration Plan. The public may review the plan at *https://dojmt.gov/lands/yellowstone-river-oil-spill-July-2011/,* by email at *NRDP@mt.gov* with "Yellowstone restoration plan comment" in the subject line, in person at Montana Natural Resource Damage Program, 1720 9th Avenue, Helena, MT 59620–1425, or by mail by sending a request to Montana Natural Resource Damage Program, P.O. Box 201425, Helena, MT 59620–1425. Comments on the draft restoration plan should be sent to the Montana Natural Resource Damage Program at the addresses listed above or provided orally at an October 12, 2016 public meeting. All comments on the Restoration Plan must be submitted no later than October 31, 2016.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–23309 Filed 9–27–16; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 16–05]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2017

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. § 7707(b) (the "Act").

Dated: September 20, 2016.

Sarah E. Fandell,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2017

Summary

In accordance with section 608(b)(2) of the Millennium Challenge Act of 2003 (the "Act," 22 U.S.C. 7707(b)(l)), the Millennium Challenge Corporation (MCC) is submitting the enclosed report. This report identifies the criteria and methodology that MCC intends to use to determine which candidate countries may be eligible to be considered for assistance under the Act for fiscal year 2017.

Under section 608 (c)(1) of the Act, MCC will, for a thirty-day period following publication, accept and consider public comment for purposes of determining eligible countries under section 607 of the Act (22 U.S.C. 7706).

Criteria and Methodology for FY 2017

This document explains how the Board of Directors (Board) of the Millennium Challenge Corporation (MCC) will identify, evaluate, and determine eligibility of countries for Millennium Challenge Account (MCA) assistance for fiscal year (FY) 2017. The statutory basis for this report is set forth in Appendix A. Specifically, this document discusses:

I. Which countries MCC will evaluate
II. How the Board evaluates these countries
  A. Overall
  B. For selection for first compact eligibility
  C. For selection for second/subsequent compact eligibility
  D. For threshold program assistance
  E. A note on potential regional investments
  F. A note on potential transition to upper middle income country (UMIC) status after initial selection

I. Which countries are evaluated?

As discussed in the August 2016 Report on Countries that are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2017 and Countries that Would be Candidates but for Legal Prohibitions (the "Candidate Country Report"), MCC evaluates all low-income countries (LICs) and lower-middle income countries (LMICs) as follows:

- For scorecard evaluation purposes for FY 2017, MCC defines LICs as those countries between $0 and $1945 GNI per capita, and LMICs as those countries between $1946 and $4035 GNI per capita.[1]
- For funding purposes for FY 2017, MCC defines the poorest 75 countries as LICs, and the remaining countries up to the UMIC threshold of $4035 as LMICs.[2]

Under Appendix B, lists of all LICs, LMICs and statutorily prohibited countries for evaluation purposes are provided. The list using the "funding" definition was outlined in the FY 2017 Candidate Country Report and describes how funding categories work.

II. How does the Board evaluate these countries?

A. Overall evaluation

The Board looks at three legislatively-mandated factors in its evaluation of any candidate country for compact eligibility: (1) Policy performance; (2) the opportunity to reduce poverty and generate economic growth; and (3) the availability of MCC funds.

1. Policy Performance

Because of the importance of needing to evaluate a country's policy performance and needing to do so in a comparable, cross-country way, the Board relies to the maximum extent possible upon the best-available objective and quantifiable indicators of policy performance. These indicators act as proxies of the country's commitment to just and democratic governance, economic freedom, and investing in its people, as laid out in MCC's founding legislation. Comprised of 20 third-party indicators in the categories of "encouraging economic freedom," "investing in people," and "ruling justly," MCC "scorecards" are created for all LICs and LMICs. To "pass" the indicators on the scorecard, the country must perform above the median among its income group (as defined above), except in the cases of inflation, political rights, civil liberties, and immunization rates (LMICs only), where threshold scores have been established. In particular, the Board considers whether the country:

- Passed at least 10 of the 20 indicators, with at least one in each category,
- Passed either the "Political Rights" or "Civil Liberties" indicator, and
- Passed the "Control of Corruption" indicator.

While satisfaction of all three aspects means a country is termed to have "passed" the scorecard, the Board also considers whether the country performed "substantially worse" in any one policy category than it does on the scorecard overall. Appendix C describes all 20 indicators, their definitions, what is required to "pass," their source, and their relationship to the legislative criteria.

The mandatory passing of either the "Political Rights" or "Civil Liberties" indicators is called the "Democratic Rights" "hard hurdle" on the scorecard, while the mandatory passing of the "Control of Corruption" indicator is called the "Control of Corruption" "hard hurdle." Not passing either "hard hurdle" results in not passing the scorecard overall, regardless of whether at least 10 of the 20 other indicators are passed.

- Democratic Rights "hard hurdle:" This hurdle sets a minimum bar for democratic rights below which the Board will not consider a country for eligibility. Requiring that a country pass either the Political Rights or Civil Liberties indicator creates a democratic incentive for countries, recognizes the importance democracy plays in driving poverty-reducing economic growth, and holds MCC accountable to working with the best governed, poorest countries. When a candidate country is only passing one of the two indicators comprising the hurdle (instead of both), the Board will also look closely at why it is not passing the other indicator to understand what the score implies for the broader democratic environment and trajectory of the country.

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[1] This corresponds to LIC and LMIC definitions using the historic International Development Association (IDA) thresholds published by the World Bank.

[2] By law, no more than 25 percent of all compact funds for a given fiscal year may be provided to LMIC countries (using this "funding" definition).

- Control of Corruption "hard hurdle:" Corruption in any country is an unacceptable tax on economic growth and an obstacle to the private sector investment needed to reduce poverty. Accordingly, MCC seeks out partner countries that are committed to combatting corruption. It is for this reason that MCC also has the "Control of Corruption" "hard hurdle," which helps ensure that MCC is working with countries where there is relatively strong performance in controlling corruption. Requiring the passage of the indicator provides an incentive for countries to demonstrate a clear commitment to controlling corruption, and allows MCC to better understand the issue by seeing how the country performs relative to its peers and over time.

Together, the 20 policy performance indicators are the predominant basis for determining which countries will be eligible for MCC assistance, and the Board expects a country to be passing its scorecard at the point the Board decides to select the country for either a first or second/subsequent compact.

However, the Board also recognizes that even the best-available data has inherent challenges. For example, data gaps, real-time events versus data lags, the absence of narratives and nuanced detail, and other similar weaknesses affect each of these indicators. In such instances, the Board uses its judgment to interpret policy performance as measured by the scorecards. The Board may also consult other sources of information to further enhance its understanding of a given country's policy performance beyond the issues on the scorecard, which is especially useful given the unique perspective of each Board member (e.g., specific policy issues related to trade, civil society, other U.S. aid programs, financial sector performance, and security/foreign policy issues). The Board uses its judgment on how best to weigh such information in assessing overall policy performance.

2. The Opportunity To Reduce Poverty and Generate Economic Growth

The Board also consults other sources of qualitative and quantitative information to have a more detailed view of the opportunity to reduce poverty and generate economic growth in a country. While the Board considers a range of other information sources depending on the country, specific areas of attention typically include better understanding the issues on, trends in, and trajectory of:

- The state of democratic and human rights (especially of vulnerable groups[3]);
- The perspective of civil society on salient governance issues;
- The control of corruption and rule of law;
- The potential for the private sector (both local and foreign) to lead investment and growth;
- The levels of poverty within a country; and
- The country's institutional capacity.

Where applicable, the Board also considers MCC's own experience and ability to reduce poverty and generate economic growth in a given country—such as considering MCC's core skills versus the country's needs, capacity within MCC to work with a country, and the likelihood that MCC is seen by the country as a credible partner.

This information provides greater clarity on the likelihood that MCC investments will have an appreciable impact on reducing poverty and generating economic growth in a given country. The Board has used such information both to not select countries that are otherwise passing their scorecards, as well as to better understand when a country's performance on a particular indicator may not be up to date or is about to change. More details on this subject (sometimes referred to as "supplemental information") can be found on MCC's website.

3. The Availability of MCC Funds

The final factor that the Board must consider when evaluating countries is the funding available. The agency's allocation of its budget is constrained, and often specifically limited, by provisions in the authorizing legislation and appropriations acts. MCC has a continuous pipeline of countries in compact development, compact implementation, and compact closeout, as well as threshold programs. Consequently, the Board factors in the overall portfolio picture when making its selection decisions given the funding available for each of the agency's planned or existing programs.

The following subsections describe how each of these three legislatively-mandated factors are applied with regard to the selection situations the Board encounters each December: Selection of countries for first compact eligibility, selection of countries for second/subsequent compact eligibility, and selection of countries for the threshold program. Thereafter, notes are included on consideration of countries for potential regional investments, and issues for consideration for countries that might graduate to upper middle income country status after selection.

B. Evaluation for selection of countries for first compact eligibility

When selecting countries for compact eligibility, the Board looks at all three legislatively-mandated aspects described in the previous section: (1) Policy performance, first and foremost as measured by the scorecards and bolstered through additional information (as described in the previous section); (2) the opportunity to reduce poverty and generate economic growth, examined through the use of other supporting information (as described in the previous section); and (3) the funding available.

At a minimum, the Board looks to see that the country passes its scorecard. It also examines supporting evidence that the country's commitment to just and democratic governance, economic freedom, and investing in its people is on a sound footing and performance is on a positive trajectory (especially on the 'hard hurdles' of Democratic Rights and Control of Corruption, as described in the previous section), and that MCC has funding to support a meaningful compact with that country. Where applicable, previous threshold program information is also considered. The Board then weighs the information described above across each of the three dimensions.

The approach described above is then applied in any additional years of selection of a country to continue to develop a first compact, with the added benefit of having cumulative scorecards, cumulative records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the emerging multi-year trajectory.

C. Evaluation for selection of countries for second/subsequent compact eligibility

Section 609(k) of the Millennium Challenge Act of 2003, as amended, specifically authorizes MCC to enter into "one or more subsequent Compacts." MCC does not consider subsequent compact eligibility, however, before countries have completed their compact or are within 18 months of completion, (e.g., a second compact if they have completed or are within 18 months of completing their first compact). Selection for subsequent compacts is not automatic and is intended only for countries that (1) exhibit successful performance on their previous compact; (2) exhibit improved scorecard policy performance during the partnership; and (3) exhibit a continued commitment to further their sector reform efforts in any subsequent partnership. As a result, the Board has an even higher standard when selecting countries for subsequent compacts.

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[3] For example, women; children; lesbian, gay, bisexual, and transgender individuals; people with disabilities; and workers.

1. Successful implementation of the previous compact

To evaluate the degree of success of the previous compact, the Board looks to see if there is a clear evidence base of success within the budget and time limits of the compact, in particular by looking at three aspects:

- The degree to which there is evidence of strong political will and management capacity: Is the partnership characterized by the country ensuring that both policy reforms and the compact program itself are both being implemented to the best ability that the country can deliver;
- The degree to which the country has exhibited commitment and capacity to achieve program results: Are the financial and project results being achieved; to what degree is the country committing its own resources to ensure the compact is a success; to what extent is the private sector engaged (if relevant); and other compact-specific issues; and
- The degree to which the country has implemented the compact in accordance with MCC's core policies and standards: That is, is the country adhering to MCC's policies and procedures, including in critical areas such as remediating unresolved fraud and corruption and abuse or misuse of funds issues; procurement; and monitoring and evaluation.

Details on the specific types of information examined (and sources used) in each of the three areas are provided in Appendix D. Overall, the Board is looking for evidence that the previous compact will be completed or has been completed successfully, on time and on budget, and that there is a commitment to continued, robust reform going forward.

2. Improved scorecard policy performance

Beyond successful implementation of the previous compact, the Board expects the country to have improved its overall scorecard policy performance during the partnership, and to pass the scorecard in the year of selection for the subsequent compact. The Board focuses on:

- The overall scorecard pass/fail rate over time, what this suggests about underlying policy performance, as well as an examination of the underlying reasons;
- The progress over time on policy areas measured by both hard-hurdle indicators—Democratic Rights and Control of Corruption—including an examination of the underlying reasons; and
- Other indicator trajectories as deemed relevant by the Board.

In all cases, while the Board expects the country to be passing its scorecard, other sources of information are examined to understand the nuance and reasons behind scorecard or indicator performance over time, including any real-time updates, methodological changes within the indicators themselves, shifts in the relevant candidate pool, or alternative policy performance perspectives (such as gleaned through consultations with civil society and related stakeholders). Other sources of information are also consulted to look at policy performance over time in areas not covered by the scorecard, but that are deemed important by the Board (such as trade, foreign policy concerns, etc.).

3. A commitment to further sector reform

The Board expects that subsequent compacts will endeavor to tackle deeper policy reforms necessary to unlock an identified constraint to growth. Consequently, the Board considers its own experience during the previous compact in considering how committed the country is to reducing poverty and increasing economic growth, and therefore tries to gauge the country's commitment for further sector reform should it be selected for a subsequent compact. This includes:

- Assessing the country's delivery of policy reform during the previous compact (as described above);
- Assessing expectations of the country's ability and willingness to continue embarking on sector policy reform in a subsequent compact;
- Examining both other sources of information that describe the nature of the opportunity to reduce poverty and generate growth (as outlined in A.2 above), and the relative success of the previous compact overall, as already discussed; and
- Finally, considering how well funding can be leveraged for impact, given the country's experience in the previous compact.

Through this overall approach to subsequent compact selection, the Board applies the three legislatively mandated evaluation criteria (policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available) in a way that rests critically on deeply assessing the previous partnership: from a compact success standpoint, a commitment to improved scorecard policy performance standpoint, and a commitment to continued sector policy reform standpoint. The Board then weighs all of the information described above in making its decision.

The approach described above is then applied in any additional years of selection necessary as the country continues to develop the subsequent compact, with the added benefit of having even further detail on previous compact implementation, cumulative scorecards, records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the resulting multi-year trajectory.

D. Evaluation for threshold program assistance

The Board may also evaluate countries for participation in the Threshold Program. The Threshold Program provides assistance to candidate countries that exhibit a significant commitment to meeting the criteria described in the previous subsections, but fail to meet such requirements. Specifically, in examining the policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available, the Board will consider whether a country that potentially qualifies for threshold program assistance appears to be on a trajectory to becoming viable for compact eligibility in the medium term.

E. A note on potential regional investments

FY 2017 marks the second year that the Board may consider selecting countries where potential regional investments (i.e., complementary assistance by MCC to two or more countries in a region) may be developed.

With respect to regional investments, the fundamental criteria and process for selection will remain unchanged: countries will continue to be evaluated and selected individually, as described in sections A, B, and C above. However, for countries where regional investments might be contemplated, the Board will also examine additional supplemental information looking at the policy environment from a regional dimension.

Specifically, the Board will examine additional data and information related to:

- The current state of the country's political and economic integration with its region and neighbors;
- Impediments to further integration with its region and neighbors; and
- The potential gains from investing at a regional level, including illustrative potential sector opportunities.

The Board will weigh this additional regional information in tandem with the other supplemental factors described earlier in sections A, B, and C. The Board will then decide whether or not it will direct MCC to explore some form of a regional investment with the country.

F. A note on potential transition to upper middle income country (UMIC) status after initial selection

Some candidate countries may have a high LMIC per capita income and/or a high growth rate that implies there is a chance they could transition to UMIC status during the life of an MCC partnership. In such cases, it is not possible to accurately predict when such a country may or may not transition to UMIC status.

Nonetheless, such countries may have more resources at their disposal for funding their own growth and poverty reduction strategies. As a result, in addition to using the regular selection criteria described in the previous sections, the Board will also use its discretion to assess both the need and the opportunity presented by partnering with such a country, in order to ensure that there is a higher bar for possible selection as compact eligible.

Specifically, if a candidate country with a high probability of transitioning to UMIC status is under consideration for selection, the Board will examine additional data and information related to:

- Whether the country faces significant challenges accessing other sources of development financing (such as international capital, domestic resources, and other donor assistance) and, if so, examining if MCC grant financing would be an appropriate tool.
- Whether the nature of poverty in the country (for example, high inequality or poverty headcount ratios relative to peer countries) presents a clear and strategic opportunity for MCC to assist the country in reducing such poverty through investments that spur economic growth.
- Whether the country demonstrates particularly strong policy performance, including policies and actions that demonstrate a clear priority on poverty reduction.
- Whether MCC can reasonably expect that the country would contribute a significant amount of funding to the compact.

These additional criteria would then be applied in any additional years of selection as the country continues to develop its compact. Should the country eventually transition to UMIC status during compact development, the country would no longer be a candidate country for that fiscal year. Consequently, continuing the partnership beyond that point would then be at the Board's discretion, and would rely on funding from previous fiscal years from when the country was a candidate country.

Appendix A: Statutory Basis for this Report

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. § 7707(b) (the Act).

Section 605 of the Act authorizes the provision of assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries for compact assistance for FY 2017 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, MCC's opportunity to reduce poverty and generate economic growth in the country, and the availability of funds. These steps include the submission of reports to the congressional committees specified in the Act and publication of information in the *Federal Register* that identify:

1. The countries that are "candidate countries" for MCA assistance for FY 2017 based on per capita income levels and eligibility to receive assistance under U.S. law. (section 608(a) of the Act; 22 U.S.C. § 7707(a));

2. The criteria and methodology that MCC's Board of Directors (Board) will use to measure and evaluate policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. § 7706) in order to determine "eligible countries" from among the "candidate countries" (section 608(b) of the Act; 22 U.S.C. § 7707(b)); and

3. The list of countries determined by the Board to be "eligible countries" for FY 2017, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act; 22 U.S.C. § 7707(d)).

This report reflects the satisfaction of item 2 above.

Appendix B: Lists of all LICs, LMICs, and Statutorily Prohibited Countries for Evaluation Purposes

Income Classification for Scorecards

Since MCC was created, it has relied on the World Bank's gross national income (GNI) per capita income data (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into two income categories for purposes of creating scorecards: LICs and LMICs. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecards ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize.

MCC will continue to use the traditional income categories for eligibility to categorize countries in two groups for purposes of FY 2017 scorecard comparisons:

- LICs are countries with GNI per capita below IDA's historical ceiling for eligibility ($1,945 for FY 2017); and
- LMICs are countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's upper middle income country threshold ($1,946–$4,035 for FY 2017).

The list of countries categorized as LICs and LMICs for the purpose of FY 2017 scorecard assessments can be found below.[4]

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[4] In December 2011, a statutory change requested by MCC altered the way MCC must group countries for the purposes of applying MCC's 25 percent LMIC funding cap. This change, designed to bring stability to the funding stream, affects how MCC funds countries selected for compacts and does not affect the way scorecards are created. For determining whether a country can be funded as an LMIC or LIC:

- The poorest 75 countries are now considered LICs for the purposes of MCC funding. They are not limited by the 25 percent funding cap on LMICs.
- Countries with a GNI per capita above the poorest 75 but below the World Bank's upper middle income country threshold ($4,035 for FY 2017) are considered LMICs for the purposes of MCC funding. By law, no more than 25 percent of all compact funds for a given fiscal year can be provided to these countries.

Low Income Countries

(FY 2017 Scorecard)

1. Afghanistan
2. Bangladesh
3. Benin
4. Burkina Faso
5. Burma
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Cote d'Ivoire
13. Democratic Republic of Congo
14. Djibouti
15. Eritrea
16. Ethiopia
17. Gambia
18. Ghana
19. Guinea
20. Guinea-Bissau
21. Haiti
22. India
23. Kenya
24. Kyrgyz Republic
25. Lao PDR
26. Lesotho
27. Liberia
28. Madagascar
29. Malawi
30. Mali
31. Mauritania
32. Mozambique
33. Nepal
34. Nicaragua
35. Niger
36. North Korea
37. Pakistan
38. Rwanda
39. Sao Tome and Principe
40. Senegal
41. Sierra Leone
42. Solomon Islands
43. Somalia
44. South Sudan
45. Sudan
46. Syria
47. Tajikistan
48. Tanzania
49. Timor Leste
50. Togo
51. Uganda
52. Yemen
53. Zambia
54. Zimbabwe

Lower Middle Income Countries

(FY 2017 Scorecard)

1. Armenia
2. Bhutan
3. Bolivia
4. Cabo Verde
5. Egypt
6. El Salvador
7. Guatemala
8. Honduras
9. Indonesia
10. Kiribati
11. Kosovo
12. Micronesia
13. Moldova
14. Mongolia
15. Morocco
16. Nigeria
17. Papua New Guinea
18. Philippines
19. Republic of Congo
20. Samoa
21. Sri Lanka
22. Swaziland
23. Tonga
24. Tunisia
25. Ukraine
26. Uzbekistan
27. Vanuatu
28. Vietnam

Statutorily prohibited countries for FY17[5]

1. Bolivia
2. Burma
3. Eritrea
4. North Korea
5. South Sudan
6. Sudan
7. Syria
8. Zimbabwe

Appendix C: Indicator Definitions

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources.[6] Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the Public Guide to the Indicators on MCC's public website at *www.mcc.gov*).

Ruling Justly

1. Political Rights: Independent experts rate countries on the prevalence of free and fair electoral processes; political pluralism and participation of all stakeholders; government accountability and transparency; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Pass: Score must be above the minimum score of 17 out of 40. Source: Freedom House

2. Civil Liberties: Independent experts rate countries on freedom of expression and belief; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Pass: Score must be above the minimum score of 25 out of 60. Source: Freedom House

3. Freedom of Information: Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is filtering internet content or tools. Pass: Score must be above the median score for the income group. Source: Freedom House/Centre for Law and Democracy

4. Government Effectiveness: An index of surveys and expert assessments that rate countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Pass: Score must be above the median score for the income group.

The FY 2017 Candidate Country Report lists LICs and LMICs based on this new definition and outlines which countries are subject to the 25 percent funding cap.

[5] This list is current as of August 1, 2016. Between such date and the December 2016 selection Board meeting, other countries may also be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY 2017. Even though these countries are prohibited from received assistance, scorecards are still created for them to ensure all countries are included in an income group in order to determine the global medians/scores for that income group.

[6] Special note on Kosovo: Since UN agencies do not currently publish data for Kosovo due to non-recognition status, MCC is unable to source data directly from the UN for the six indicators that are constructed in all or in part from this data: Land Rights and Access, Health Expenditures, Primary Education Expenditures, Immunization Rates, Girls' Secondary Education Enrollment Rate, and Child Health. As result, MCC publishes data from UNKT (the UN Kosovo Team) in cases where UNKT uses comparable methodologies to their UN sister organizations. See *http://www.unkt.org/* for more information.

Source: Worldwide Governance Indicators (World Bank/Brookings)

5. Rule of Law: An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

6. Control of Corruption: An index of surveys and expert assessments that rate countries on: "grand corruption" in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in "state capture," among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

Encouraging Economic Freedom

1. Fiscal Policy: General government net lending/borrowing as a percent of gross domestic product (GDP), averaged over a three year period. Net lending/borrowing is calculated as revenue minus total expenditure. The data for this measure comes from the IMF's World Economic Outlook. Pass: Score must be above the median score for the income group. Source: The International Monetary Fund's World Economic Outlook Database

2. Inflation: The most recent average annual change in consumer prices. Pass: Score must be 15% or less. Source: The International Monetary Fund's World Economic Outlook Database

3. Regulatory Quality: An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

4. Trade Policy: A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Pass: Score must be above the median score for the income group. Source: The Heritage Foundation

5. Gender in the Economy: An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, and to travel freely. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

6. Land Rights and Access: An index that rates countries on the extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. Pass: Score must be above the median score for the income group. Source: The International Fund for Agricultural Development and the International Finance Corporation

7. Access to Credit: An index that rates countries on rules and practices affecting the coverage, scope, and accessibility of credit information available through either a public credit registry or a private credit bureau; as well as legal rights in collateral laws and bankruptcy laws. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

8. Business Start-Up: An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

Investing in People

9. Public Expenditure on Health: Total expenditures on health by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The World Health Organization

10. Total Public Expenditure on Primary Education: Total expenditures on primary education by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The United Nations Educational, Scientific and Cultural Organization and National Governments

11. Natural Resource Protection: Assesses whether countries are protecting up to 17 percent of all their biomes (*e.g.,* deserts, tropical rainforests, grasslands, savannas and tundra). Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

12. Immunization Rates: The average of DPT3 and measles immunization coverage rates for the most recent year available. Pass: Score must be above the median score for LICs, and 90% or higher for LMICs. Source: The World Health Organization and the United Nations Children's Fund

13. Girls Education:

a. Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). LICs are assessed on this indicator. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

b. Girls Secondary Enrollment Education: The number of female pupils enrolled in lower secondary school, regardless of age, expressed as a percentage of the population of females in the theoretical age group for lower secondary education. LMICs will be assessed on this indicator instead of Girls Primary Completion Rates. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

14. Child Health: An index made up of three indicators: (i) access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. A set of objective and quantifiable policy indicators is used to inform eligibility decisions for MCA assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) promote political pluralism, equality and the rule of law (Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy);

(B) respect human and civil rights, including the rights of people with disabilities (Political Rights, Civil Liberties, and Freedom of Information);

(C) protect private property rights (Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access);

(D) encourage transparency and accountability of government (Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness); and

(E) combat corruption (Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption);

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) encourage citizens and firms to participate in global trade and international capital markets (Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality);

(B) promote private sector growth (Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality);

(C) strengthen market forces in the economy (Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, Access to Credit, and Regulatory Quality); and

(D) respect worker rights, including the right to form labor unions (Civil Liberties and Gender in the Economy); and

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) promote broad-based primary education (Girls' Primary Completion Rate, Girls' Secondary Education Enrollment Rate, and Total Public Expenditure on Primary Education);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (Immunization Rates, Public Expenditure on Health, and Child Health); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (Natural Resource Protection).

Appendix D: Subsequent Compact Considerations

MCC reporting and data in the following chart are used to assess compact performance of MCC partners nearing the end of compact implementation (i.e., within 18-months of compact end date). Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's website under MCC country programs (*https://www.mcc.gov/where-we-work*) or monitoring and evaluation (*https://www.mcc.gov/our-impact/m-and-e*) webpages.

Topic	MCC reporting/data source	Published documents

COUNRY PARTNERSHIP
Political Will
• Status of major conditions precedent
• Program oversight/implementation
  ○ project restructures
  ○ partner response to MCA capacity issues
• Political independence of MCA
Management Capacity
• Project management capacity
• Project performance
• Level of MCC intervention/oversight
• Relative level of resources required
	• Quarterly implementation reporting
	• Quarterly results reporting
	• Survey of MCC staff
		• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://go.usa.gov/jMcC*
		• Survey questions to be posted: *https://www.mcc.gov/resources/doc/summary-compact-survey-summary-fy17*

PROGRAM RESULTS Financial Results • Commitments—including contributions to compact funding • Disbursements Project Results • Output, outcome, objective targets • MCA commitment to 'focus on results' • MCA cooperation on impact evaluation • Percent complete for process/outputs • Relevant outcome data • Details behind target delays Target Achievements	• Indicator tracking tables • Quarterly financial reporting • Quarterly implementation reporting • Quarterly results reporting • Survey of MCC staff • Impact evaluations	• Monitoring and Evaluation Plans (available by country): *http://go.usa.gov/jMcC* • Quarterly Status Reports (available by country): *http://1.usa.gov/NfEbcl* • Quarterly results published as "Table of Key Performance Indicators" (available by country): *https://www.mcc.gov/our-impact/m-and-e/* • Survey questions to be posted: *https://www.mcc.gov/resources/doc/summary-compact-survey-summary-fy17*
ADHERENCE TO STANDARDS • Procurement • Environmental and social • Fraud and corruption • Program closure • Monitoring and evaluation • All other legal provisions	• Audits (GAO and OIG) • Quarterly implementation reporting • Survey of MCC staff	• Published OIG and GAO Audits • Survey questions to be posted: *https://www.mcc.gov/resources/doc/summary-compact-survey-summary-fy17*

Topic	MCC reporting/data source	Published documents
COUNTRY SPECIFIC Sustainability • Implementation entity • MCC investments Role of private sector or other donors • Other relevant investors/investments • Other donors/programming • Status of related reforms • Trajectory of private sector involvement going forward	• Quarterly implementation reporting • Quarterly results reporting • Survey of MCC staff	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *https://www.mcc.gov/our-impact/m-and-e* • Survey questions to be posted: *https://www.mcc.gov/resources/doc/summary-compact-survey-summary-fy17*

[FR Doc. 2016–22988 Filed 9–27–16; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–052]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by October 28, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0003, 3 items, 3 temporary items). Records relating to Federal acquisition contracting and certification.

2. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2016–0005, 2 items, 2 temporary items). Records related to the importers of firearms and ammunition.

3. Department of the Treasury, Bureau of Fiscal Service (DAA–0425–2016–

0010, 7 items, 7 temporary items). Records of the Surety Bond Branch relating to the qualification of insurance companies as acceptable sureties on bonds, including financial statements and worksheets, policy files, and auditor notes.

4. Executive Office of the President, Council on Environmental Quality (DAA–0580–2014–0001, 17 items, 6 temporary items). Records include routine administrative records and correspondence, volunteer applications, general emergency management files, and working files. Proposed for permanent retention are files of senior agency officials including correspondence, briefing materials, and subject files; emergency management files for essential functions; and files associated with regulatory oversight.

5. Federal Reserve System, Office of the Inspector General (DAA–0082–2015–0001, 19 items, 16 temporary items). Records include investigation and audit case files and related records, general program files, legal opinion records, and strategic plans. Proposed for permanent retention are case files of significant investigations, final reports, and reports to Congress.

6. General Services Administration, Agency-wide (DAA–0352–2016–0001, 5 items, 5 temporary items). Records related to information technology hosting and shared services provided for agencies, including agreements; management, operations, and standards development files; and publicly-posted web content for agencies.

7. National Science Foundation, Office of the Inspector General (DAA–0307–2016–0003, 17 items, 13 temporary items). Records include investigative and audit case files (exclusive of those with significant historical value), peer review files, audit policies and procedures, strategic plans, project files, and administrative and case tracking records. Proposed for permanent retention are investigative and audit case files with significant historical value, final investigative policies and procedures, and semiannual reports to Congress.

8. Peace Corps, Office of Global Operations (DAA–0490–2016–0005, 3 items, 2 temporary items). Records of the Office of Peace Corps Response including routine program files and administrative records. Proposed for permanent retention are program management files.

9. Peace Corps, Office of Volunteer Recruitment and Selection (DAA–0490–2016–0006, 4 items, 4 temporary items). Records related to the management, placement, support, recruitment and return of Peace Corps volunteers.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–23354 Filed 9–27–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On July 20, 2016, August 1, 2016 and August 2, 2016, the National Science Foundation published notices in the **Federal Register** of permit applications received. The permits were issued on September 23, 2016 to:

1. Glenn McClure—Permit No. 2017–009
2. Joseph Wilson—Permit No. 2017–006
3. Maris Wicks—Permit No. 2017–007

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–23352 Filed 9–27–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Cornell High Energy Synchrotron Source (CHESS) at Cornell University, Ithaca, NY by the Division of Materials Research (DMR) #1203.

Dates & Times: October 16, 2016; 5:00 p.m.–9:00 p.m.; October 17, 2016; 7:30 a.m.–8:30 p.m.; October 18, 2016; 7:30 a.m.–5:00 p.m.

Place: Cornell University, Ithaca, NY.

Type of Meeting: Part-Open.

Contact Person: Dr. Guebre X. Tessema, and Dr. Leonard Spinu, Program Directors, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4935.

Purpose of Meeting: Site visit to provide advice and recommendations concerning further support of the CHESS.

Agenda

Sunday, October 16, 2016

5:00 p.m.–9:00 p.m. Closed—Briefing of panel.

Monday, October 17, 2016

8:00 a.m.–4:15 p.m. Open—Review of the CHESS.
4:00 p.m.–5:00 p.m. Closed—Executive Session.
5:00 p.m.–6:00 p.m. Open—Review of CHESS.
7:00 p.m.–8:00 p.m. Open—Dinner.
8:00 p.m.–9:00 p.m. Closed—Executive Session.

Tuesday, October 18, 2015

8:00 a.m.–9:00 a.m. Open—Review of the CHESS.
9:00 a.m.–4:00 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 23, 2016.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2016–23377 Filed 9–27–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 6–8, 2016, 11545 Rockville Pike, Rockville, Maryland.

Thursday, October 6, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:45 a.m.: Preparation for the Commission Meeting (Open)—The Committee will prepare for the

Commission Meeting which is being held on October 6, 2016, 10:00 a.m. until 12:00 p.m.

10:00 a.m.–12:00 p.m.: ACRS Meeting with the Commission (Open)—The Committee will meet with the Commission on items of mutual interest.

1:00 p.m.–3:00 p.m.: Grand Gulf Nuclear Station Unit 1 License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy regarding the safety evaluation associated with the Grand Gulf Unit 1 license renewal application.

3:15 p.m.–4:15 p.m.: Review of RG 1.26, Rev. 5, "Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding RG 1.26.

4:15 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, October 7, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [NOTE: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Research Quality Review Panels (Open)—The Committee will discuss the Office of Nuclear Regulatory Research projects.

12:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

Saturday, October 8, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 22nd day of September, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–23371 Filed 9–27–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2014–0109]

License Renewal Application for Fermi 2 Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final plant-specific supplement, Supplement 56, to NUREG–1437, "*Generic Environmental Impact Statement for License Renewal of Nuclear Plants*" (GEIS), regarding the renewal of the DTE Electric Company (DTE) operating license NPF–43 for an additional 20 years of operation for Fermi 2 Nuclear Power Plant (Fermi 2)

DATES: The final Supplement 56 to the GEIS is available as of September 28, 2016.

ADDRESSES: Please refer to Docket ID NRC–2014–0109 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The final Supplement 56 to NUREG–1437 is in ADAMS under Accession No. ML16259A103 for Volume 1 and ML16259A109 for Volume 2.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *Public Libraries:* The final Supplement 56 to NUREG–1437 is available for public inspection at the Ellis Library and Reference Center, Monroe, Michigan.

FOR FURTHER INFORMATION CONTACT: Elaine Keegan, Office of Nuclear Reactor Regulation, telephone: 301–415–8517, email: *Elaine.Keegan@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with § 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is making available final Supplement 56 to NUREG–1437, regarding the renewal of DTE operating license NPF–43 for an additional 20 years of operation for Fermi 2. Draft Supplement 56 to NUREG–1437 was published in the **Federal Register** on November 6, 2015 (80 FR 68881), and published in the **Federal Register** by the Environmental Protection Agency on November 13, 2015 (80 FR 70206). The public comment period on draft Supplement 56 to NUREG–1437 ended on December 28, 2015, and the comments received are addressed in final Supplement 56 to NUREG–1437.

II. Discussion

As discussed in Chapter 5 of the final Supplement 56 to NUREG–1437, the NRC staff determined that the adverse environmental impacts of license renewal for Fermi 2 are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by DTE; (3) consultation with Federal, State, local, and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the Draft Supplemental Environmental Impact Statement.

Dated at Rockville, Maryland, this 21 day of September, 2016.

For the Nuclear Regulatory Commission.

Kevin T. Folk,

Acting Chief, Environmental Review and Projects Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–23372 Filed 9–27–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

OPM.GOV Feedback Tab Survey 3206—NEW

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, the OPM.GOV Feedback tab survey. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** (81 FR 41608, June 27, 2016) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 28, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview: This survey will be accessed through a feedback tab that will appear on each subpage of the *www.opm.gov* Web site. OPM has enhanced its focus on customer service by making it a goal in the FY 2014–2018 Strategic Plan (Goal 2). OPM is also part of the Customer Service Cross-Agency Priority Goal Community of Practice. This survey will provide the agency with relevant information, particularly in support of performance measures for Strategic Goal 2.

Analysis

Agency: Office of Personnel Management.

Title: OPM.GOV Feedback Tab Survey.

OMB Number: 3206–NEW.

Frequency: Continuous access to the survey link.

Affected Public: Individuals who visit *OPM.GOV.*

Number of Respondents: Unknown at this time, as survey will be administered via "open participation." No firm sample size exists; however, target completion is between 30,000 and 60,000 unique responses over the span of a year.

Estimated Time per Respondent: 7–10 minutes.

Total Burden Hours: 7–10 minutes.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–23353 Filed 9–27–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

We Need Information About Your Missing Payment—OPM Form RI 38–31, OMB No. 3206–0187

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an approved information collection request (ICR), OMB No. 3206–0187, We Need Information About Your Missing Payment, OPM Form RI 38–31. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 28, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Room 2347E, Washington, DC 20415–3500, Attention: Alberta Butler or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: Form RI 38–31 is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis:

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need Information About Your Missing Payment.

OMB: 3206–0187.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 8,000.

Estimated Time per Respondent: 17 minutes.

Total Burden Hours: 1,333 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–23373 Filed 9–27–16; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78908; File No. SR–NASDAQ–2016–111]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Nasdaq Rules 4702 and 4703

September 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rules 4702, Order Types, and 4703, Order Attributes, to change the way in which Post Only Orders interact with resting Non-Display orders and preventing the execution of midpoint pegged orders during a crossed market.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers various Order Types[3] and Order Attributes[4] to help members trade effectively on behalf of investors and themselves. This proposal would modify the manner in which two of those order types, Non-Display and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 4702. The Exchange also proposes a minor technical correction to add the word "price" after the word "displayed" in the second line of the second paragraph of Rule 4702(b)(4)(B).

[4] *See* Exchange Rule 4703.

Post Only, interact within Nasdaq's trading system.

Nasdaq's Non-Display Orders, described in Rule 4702(b)(3), help members minimize market impact when trading in larger-than-average size. For example, institutions often use Non-Display Orders that use pegging at the midpoint (Midpoint Peg Order) [5] of the National Best Bid and Offer (NBBO) to reduce market impact because a midpoint execution does not indicate a price movement direction, as opposed to buying at the offer or selling at the bid (sometimes referred to as "crossing the spread") which may publicly indicate the direction of the stock price.

The Exchange also offers Post Only Orders, described in Rule 4702(b)(4), which members, often market makers, use to rest liquidity on Nasdaq's Order Book. Resting displayed liquidity is essential to price formation and order interaction, two indicators of healthy and orderly markets. Nasdaq introduced Post Only Orders [6] to enable and encourage this valuable behavior. A Post Only buy (sell) order entered at a price that is at least $0.01 higher (lower) than a resting sell (buy) order will execute, thereby providing price improvement that exceeds the foregone rebate for liquidity provision and fee for removing liquidity. If a Post Only buy (sell) order is entered at a price equal to a resting sell (buy) order, the buy (sell) order is repriced one minimum price increment (MPV), generally $0.01 [7] lower (higher) than the resting sell (buy) order's price.

This repricing function, sometimes referred to as "price-sliding," often occurs when a liquidity provider seeking to tighten the bid/offer spread on Nasdaq encounters a Non-Display Order on the opposite side of market from the Post Only Order. When this occurs, the displayed spread on Nasdaq may become wider than on competing exchanges therefore reducing market quality and the likelihood of execution on Nasdaq. In addition, the member entering the Post Only Order learns through the repricing action both that there is a Non-Display Order resting on the book and also the price at which the Non-Display Order is resting. The Exchange believes that this interaction is inefficient and detrimental to investors, to members, and to the market.

Accordingly, the Exchange proposes two changes to the manner in which certain Post Only Orders respond to certain Non-Display Orders resting on the opposite side of the market. In all other instances, there will be no change. For example, Post-Only Orders will continue to execute against resting Non-Display Orders provided the execution results in minimum price improvement of $0.01 for the member entering the Post Only Order, as they do today.

First, a Post-Only Order that is entered with a price equal to a resting Non-Display Order will be posted at its limit price (or its adjusted price if applicable),[8] rather than being re-priced as it is today. This allows the Post Only Order to lock the resting Non-Display Order.[9] Both the displayed Post Only order and the resting Non-Display order will remain available for execution at the locking price. In this way, neither order is disadvantaged; the Exchange Bid/Offer spread is tightened; and no signal is sent to the member that entered the Post Only Order. In this scenario, efficacy is maintained or enhanced for both the Post Only Order user and the Non-Display Order user compared to today. For example, under the current rules if a Participant entered a Post-Only Order to buy at $11.02, the Best Offer [10] was $11.04, and there was a Non-Displayed Order on the Nasdaq Book to sell at $11.02, the Post-Only Order would be ranked and displayed at $11.01. Using the above scenario, the Exchange is proposing to instead rank and display the Post-Only Order to buy at its limit price of $11.02.

Second, the Exchange also proposes to modify processing when a Post Only Order interacts with a Non-Display Order that is a Midpoint Peg Order. Specifically, when a Post Only buy (sell) order is priced higher (lower) than a resting Midpoint Peg Order but where the difference is less than $0.01, the Post Only Order will nonetheless be posted at its limit price. This proposal benefits investors and members because it results in a tighter Bid/Offer spread. Moreover, because the Post Only order is not re-priced relative to the resting Midpoint Peg order, as it is today, there is no information leakage. Additionally, the member entering the Midpoint Peg Order benefits because the new midpoint based on the new NBBO would now be a better price for the seller. Midpoint Peg orders are either cancelled or re-adjusted based on NBBO changes depending on the protocol used by the member to enter the Midpoint Peg Order.[11] For example, under the current rules if the NBBO is $10.11 × $10.16 and a Participant enters a Midpoint Peg Order (which, as stated above, is Non-Displayed) to buy 200 shares with a limit price of $10.15, the Midpoint Peg Order would post to the book at $10.135. If thereafter a Post-Only Order to sell 200 shares at $10.13 is entered, the Post-Only Order would post and display at $10.14. Under the proposed change and using the example above, the incoming Post-Only Order to sell 200 shares at $10.13 would post and display at $10.13 and the Midpoint Peg Order would either be adjusted to the new midpoint ($10.125 [sic]) based on the change in the NBBO due to the Post-Only Order being displayed (the NBBO is now $10.11 × $10.14 [sic] due to the Post-Only Order posting and displaying at $10.14 [sic]) or cancelled, depending on the protocol used to enter the Midpoint Peg order.

In addition, the Exchange proposes to discontinue executing midpoint pegged orders when the NBBO is crossed. Today, the Exchange executes midpoint pegged orders when the NBBO is locked by executing at the locking price and when the NBBO is crossed by executing at the midpoint of the crossed price. Based upon feedback from members and the practice of other exchanges,[12] the Exchange has determined that its current practice of executing midpoint pegged orders during such crossed markets produces sub-optimal execution prices for members and investors. The midpoint of a crossed market is not a clear and accurate indication of a valid price, nor is it indicative of a fair and orderly market. The better result is to simply not execute midpoint orders during crossed markets. To accomplish this, the Exchange will program the trading system to respond to the creation of a crossed NBBO by cancelling existing midpoint pegged orders and rejecting the entry of new midpoint pegged orders.[13] After such order cancellation or rejection, members can resubmit their orders at their discretion without limitation. Accordingly, the Exchange proposes to modify the rule language describing the processing of Orders with the midpoint pegging attribute as well as Midpoint Peg Post Only Orders, which are described in Rules 4703(d) and 4702(b)(5).

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[5] *See* Exchange Rule 4702(b)(3)(C).

[6] *See* Post Only order Factsheet: *http://www.nasdaqtrader.com/content/ProductsServices/Trading/postonly_factsheet.pdf.*

[7] Securities priced at or above $1 are quoted in $0.01 increments, below $1, they can be quoted in $0.0001 increments. Post Only behavior is slightly different below $1 because the fees and economics involved in the execution are distinct from those above $1. *See* Exchange Rule 4702(b)(4)(A). Fees for securities priced at or above $1 are assessed on a per-share basis; fees for securities priced below $1 are assessed as a percentage of transaction value. *Compare* Rules 7018 (a) and (b). In both cases, the Exchange system is programmed to analyze the price improvement offered and to execute only where permitted under its rules.

[8] If a Post-Only Order is received at a price that would lock or cross a Protected Quotations [sic], its price will be adjusted in the same manner as a Price to Comply order (if it is not Attributable) or a Price to Display Order (if it is Attributable). *See* Rules 4702(b)(1) and 4702(b)(4)(A).

[9] The Exchange believes that this condition is consistent with the Regulation NMS prohibition on locked and crossed markets because the Exchange will not be displaying a locked market.

[10] The term "Best Offer" is defined in Exchange Rule 4701(j).

[11] *See* Exchange Rule 4703(d).

[12] *See, e.g.,* BATS Rule 11.9(c)(9) (no midpoint execution during crossed market); NYSE Arca Rule 7.31(d)(4) (no midpoint execution when the market is locked or crossed).

As set forth below, the Exchange believes the proposed changes will benefit investors and members by addressing certain market inefficiencies that exist on Nasdaq, and by improving Nasdaq's competitive position against other exchanges that already offer similar processing of resting and non-displayed orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in several ways.

First, the proposed changes will benefit investors and members by tightening bid/offer spreads, thereby enhancing execution quality on the Exchange. Second, members entering Post Only Orders will be able to execute liquidity-providing strategies more efficiently. Third, the proposed changes will reduce the signaling created today by the interaction of Post Only and Non-Display Order, and thereby minimize the market impact of larger orders. Fourth, the cancellation or rejection of midpoint pegged orders when the NBBO is crossed will avoid mispriced executions and result in higher overall execution quality for members.

The Exchange believes the proposed changes have no detrimental impact on any member or class of members, or on users of the Post Only or Non-Display Order types or on users of other order types offered by the Exchange. First, the use of Exchange Order types and attributes is voluntary, in that no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order types modified by this proposed rule change. Second, the Exchange believes that the changes proposed herein will not result in any diminution of market quality (execution price, effective spread, fill rate, etc.) for any member entering or interacting with one of the Order types modified by this proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule changes are pro-competitive for several reasons. First, the proposed functionality is designed to compete with exchanges, including BATS and NYSE Arca, which already offer order types that behave similarly to how the Exchanges proposes Post Only and Non-Display Orders behave in the future. Second, the Exchange believes that the proposed rule change will make the Exchange a more competitive execution venue by creating tighter bid/offer spreads and by enhancing execution quality (*i.e.,* achieving increased price improvement, reducing effective spreads, and increasing execution fill rates). Third, the Exchange proposes to offer the same functionality to all members, thereby eliminating potential competitive burden or differential treatment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–111. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–111 and should be submitted on or before October 19, 2016.

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[13] Similarly, in the absence of an NBBO, the Exchange will either reject the entry of new Midpoint Peg Post Only Orders or cancel any such existing orders before they execute. The Exchange is proposing to add words "cancelled or" prior to "rejected" in Rule 4702(b)(5)(A).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2016–23323 Filed 9–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading

September 26, 2016.

In the Matter of A.A. Importing Co., Inc.; ACM Corporation; Alleghany Pharmacal Corp.; Amiworld, Inc.; BTHC XIV, Inc.; Buccaneer Energy Corp.; CECO Filters, Inc.; Child World, Inc.; Comp Services Inc.; Connohio, Inc.; Dadongnan Holding., Co.; Day & Meyer, Murray & Young Corp.; DEI Holdings, Inc.; Diversified Thermal Solutions, Inc.; Global Industries Corp.; Havaya Corp.; Helpeo, Inc.; Hua Ye Gas Group Holding Co.; International Capital & Technology Corp.; Kinemotive Corp.; Old Fashion Foods, Inc.; Peptide Technologies, Inc.; PTI Holding, Inc.; Rancho Santa Monica Developments, Inc.; Restaurant Acquisition Partners, Inc.; Richland Resources Corp.; SMSA Humble Acquisition Corp.; SMSA Treemont Acquisition Corp.; Stevens International, Inc.; Sur Ventures, Inc.; USA InvestCo Holdings, Inc.; Whole Gold International Group Holding; Company; Winter Sports, Inc.; Wintex Mill, Inc.; Wyndmoor Industries, Inc.; Ya Zhu Silk, Inc.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate public information concerning the securities of each of the issuers detailed below because questions have arisen as to their operating status, if any. Each of the issuers below is quoted on OTC Link operated by OTC Markets Group, Inc. The staff of the Securities and Exchange Commission has independently endeavored to determine whether any of the issuers below are operating. Each of the issuers below either confirmed they were now private companies or no longer in operation, or failed to respond to the staff's inquiry about their operating status, did not have an operational address, or failed to provide their registered agent with an operational address. The staff of the Securities and Exchange Commission also determined that none of the issuers below has filed any information with OTC Markets Group, Inc. or the Securities and Exchange Commission for the past two years.

Issuer and ticker	Information regarding operating status *
1. A.A. Importing Co., Inc. (ANTQ)	3
2. ACM Corporation (ACMA) (CIK No. 0001493265)	1
3. Alleghany Pharmacal Corp. (ALGY)	2
4. Amiworld, Inc. (AMWO) (CIK No. 0001401273)	1
5. BTHC XIV, Inc. (BXII) (CIK No. 0001405646)	1
6. Buccaneer Energy Corp. (BCCR)	1
7. CECO Filters, Inc. (CECF) (CIK No. 0000811037)	2
8. Child World, Inc. (CHWO)	1
9. Comp Services Inc. (CMPS) (CIK No. 0001537689)	1
10. Connohio, Inc. (CNNO)	3
11. Dadongnan Holding., Co. (DGDH)	1
12. Day & Meyer, Murray & Young Corp. (DMMY)	2
13. DEI Holdings, Inc. (DEIX) (CIK No. 0001323630)	2
14. Diversified Thermal Solutions, Inc. (DVTS) (CIK No. 0001096835)	1
15. Global Industries Corp. (GBLS) (CIK No. 0001415734)	1
16. Havaya Corp. (HVAY) (CIK No. 0001483230)	1
17. Helpeo, Inc. (HLPN) (CIK No. 0001484055)	1
18. Hua Ye Gas Group Holding Co. (HUAZ)	1
19. International Capital & Technology Corp. (ICTC) (CIK No. 0000215429)	1
20. Kinemotive Corp. (KINO) (CIK No. 0000055830)	2
21. Old Fashion Foods, Inc. (OFFI)	2
22. Peptide Technologies, Inc. (PEPT) (CIK No. 0001357878)	3
23. PTI Holding, Inc. (PTIH) (CIK No. 0000885239)	1
24. Rancho Santa Monica Developments, Inc. (RSDV) (CIK No. 0001313605)	3
25. Restaurant Acquisition Partners, Inc. (RAQP) (CIK No. 0001340995)	1
26. Richland Resources Corp. (RRCH) (CIK No. 0001425897)	1
27. SMSA Humble Acquisition Corp. (SMHQ) (CIK No. 0001495900)	3
28. SMSA Treemont Acquisition Corp. (SAQU) (CIK No. 0001495898)	1
29. Stevens International, Inc. (SVEIB) (CIK No. 0000817644)	3
30. Sur Ventures, Inc. (SVTY) (CIK No. 0001482179)	1
31. USA InvestCo Holdings, Inc. (USAV) (CIK No. 0001512983)	3
32. Whole Gold International Group Holding Company (WGLD)	1
33. Winter Sports, Inc. (WSPS) (CIK No. 0000803003)	2
34. Wintex Mill, Inc. (WTXM)	1
35. Wyndmoor Industries, Inc. (WYDM)	2
36. Ya Zhu Silk, Inc. (YZSK) (CIK No. 0001448962)	1

* Below are explanations for each of the codes used in the above table:

1 = The staff of the Securities and Exchange Commission attempted to contact the issuer and either the staff did not receive a response to its letter, the letters were returned as undeliverable, or the registered agent responded that they had no forwarding address for the issuer.

2 = The staff of the Securities and Exchange Commission was able to contact the issuer, which informed the staff that it was now a private company.

3 = The staff of the Securities and Exchange Commission was able to contact the issuer, which informed the staff that it was no longer operating.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 26, 2016, through 11:59 p.m. EDT on October 7, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–23561 Filed 9–26–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78907; File No. SR–CBOE–2016–068]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Frequent Trader Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] Specifically, the Exchange proposes to expand its Frequent Trader Program. By way of background, on April 1, 2016, the Exchange adopted a program that offers transaction fee rebates to Customers (origin code "C") that meet certain volume thresholds in CBOE VIX Volatility Index options ("VIX options") and S&P 500 Index options ("SPX"), weekly S&P 500 options ("SPXW") and p.m.-settled SPX Index options ("SPXpm") (collectively referred to as "SPX options") provided the Customer registers for the program (the "Frequent Trader Program" or "Program").[4]

To participate in the Frequent Trader Program, Customers register with the Exchange. Once registered, the Customer is provided a unique identification number ("FTID") that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades during both the Regular Trading Hours and Extended Trading Hours sessions from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder ("TPH") submitting that Customer's order to the Exchange (executing agent" or "executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.

The Exchange first proposes to expand the program to allow Professional Customers and Voluntary Professionals ("W" origin code) ("Professionals") to qualify for the Program. The same terms and conditions would apply to Professionals as currently does to Customers. The Exchange believes this proposed change would provide additional incentive to direct Professional order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange next proposes to provide that, in addition to SPX and VIX options, the Program would apply to Russell 2000 Index ("RUT") options. As with SPX and VIX, the Exchange would aggregate a Customer's (or Professional's) volume (for which their FTID was entered) on a monthly basis for RUT options. If the Customer or Professional meets the thresholds proposed below, it would receive a rebate on its RUT options transaction fees, also indicated below.[5] Also, as is currently the case with SPX and VIX, although all executed contracts with an FTID will count towards the qualifying volume thresholds, the rebates will be based on the actual amount of fees assessed in accordance with the Fees Schedule (*e.g.*, if a Customer submits a RUT order for 10,000 contracts, pursuant to the current Fees Schedule, that customer would be assessed fees for only the first 5,000 contracts under the Customer Large Trade Discount Program. Therefore, while all 10,000 contracts would count when determining the tier, the Customer's rebate would be based on the amount of the fees assessed for 5,000 contracts, not on the value of the total 10,000 contracts executed). The thresholds and rebates are as follows:

RUT

Tier	Monthly RUT contracts traded	RUT fee rebate (%)
1	4,000–7,999	5
2	8,000–14,999	10
3	15,000 and above	15

The Exchange notes that the highest achieved threshold rebate rate will apply from the first executed contract (*e.g.*, if a Customer or Professional executes 10,000 RUT contracts in a month, the Tier 2 10% rebate rate would apply to all 10,000 RUT contracts). The Exchange believes the tiered program incentivizes the sending of Customer and Professional orders to the Exchange while maintaining an incremental incentive for Customers and Professionals to strive for the highest tier level. The Exchange also notes that the volume thresholds for SPX options and VIX options are higher than for RUT in light of their more mature and established positions in the industry.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed change on September 1, 2016 (SR–CBOE–2016–065). On September 13, 2016, the Exchange withdrew that filing and submitted this filing.

[4] *See* Securities Exchange Act Release No. 77554 (April 7, 2016), 81 FR 21928 (April 13, 2016) (SR–CBOE–2016–023).

[5] The Exchange notes that only transaction fees would be discounted (*i.e.*, no other surcharges, such as the Index License Surcharge Fee, would be rebated or discounted).

Next, the Exchange proposes to make some clarifying, non-substantive and organizational changes to the Frequent Trader table and Notes section in light of the proposed changes described above. First, the Exchange proposes to add a reference to Professional Customers and Voluntary Professionals in the Notes section and define "customer" as including both Customers ("C" origin) and Professional Customers and Voluntary Professionals ("W" origin). Additionally, the Exchange proposes to eliminate from the definition of "customer" in the Notes section the reference to "non-Professionals", as reference to "customer" will include both Customers and Professionals going forward. The Exchange also proposes to change the last reference to customer in the Notes section to lower case to avoid confusion as to which "customer" is being referenced. The Exchange also proposes to eliminate obsolete language pertaining to the handling of the Frequent Trader Program—Volume Corrections Form for the month of April 2016, as such language is unnecessary to maintain. Additionally, the Exchange proposes to relocate the language of the Notes section to below the Frequent Trader Program table in order to accommodate the new RUT scale. Lastly, the Exchange proposes to amend the Frequent Trader Program—Volume Corrections Form ("Form") to reflect that the Program also applies to RUT.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The expansion of the Frequent Trader Program to Professionals is reasonable because it will allow Professionals who register for the program an opportunity to receive certain rebates for reaching certain trading volume thresholds. The Exchange notes that it is voluntary for Professionals to choose whether or not to register for the program and whether to request that their unique FTID be appended to their orders. The Program is also voluntary for executing TPHs who have the option of choosing not to participate (*i.e.,* they may decline to append FTID numbers on Professional orders).

The Exchange believes it's equitable and not unfairly discriminatory to expand the program to Professionals because this is designed to attract a greater number of Professional VIX, SPX and RUT orders. This increased volume creates greater trading opportunities that benefit all market participants. Specifically, while only Customer and Professional orders qualify for the proposed rebates under the Frequent Trader Program, an increase in Customer and Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Moreover, the options industry has a long history of providing preferential pricing to Customers. Like Customers, Professionals are non-TPH, non-broker dealers and have historically also been given preferential pricing. Indeed, the Exchange notes that incentive programs based on Customer and Professional volume already exist elsewhere within the industry.[10] In addition the Exchange believes the proposed program is equitable and not unfairly discriminatory because any Professional may avail itself of this program provided it registers with the Exchange and its executing TPH participates.

Expanding the Frequent Trader Program to RUT options is reasonable because it will allow Customers and Professionals who register for the program an opportunity to receive certain rebates for reaching certain trading volume thresholds in RUT, as well as VIX and SPX. The Exchange believes adding RUT options to the Program is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in maintaining RUT, along with VIX and SPX. The proposed rule change is designed to encourage greater Customer and Professional RUT options trading, which, along with bringing greater RUT options trading opportunities to all market participants, would bring in more fees to the Exchange, and such fees can be used to recoup the Exchange's costs and expenditures from maintaining RUT options. The Exchange believes it's equitable and not unfairly discriminatory to establish lower threshold tiers for RUT than for the SPX product group and VIX because the SPX product group and VIX have reached a more mature and established level than RUT.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to include all of a Customer's and Professional's RUT executed contracts with an FTID towards the respective qualifying thresholds because the Exchange wishes to support and encourage Customers and Professionals to provide greater order flow in this class, which allows for price improvement and has a number of positive impacts on the market system. The Exchange also believes however, that it's reasonable, equitable and not unfairly discriminatory to base the rebate off the amount of transaction fees that would be assessed pursuant to the Fees Schedule (as opposed to being based off the "theoretical" fee value of all contracts executed) because the Exchange does not want to provide rebates on contracts for which it is not also collecting transaction fees.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide Professionals a choice as to how their payment is delivered. Providing Professionals with the option of requesting to receive their rebates under the Frequent Trader Program as separate direct payments or via a distribution to one or more of its executing Clearing Trading Permit Holders will provide Professionals with a convenient manner in which to receive their rebates, which perfects the mechanism for a free and open market.

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[6] The updated Frequent Trader Program—Volume Corrections Form, which will replace the current Frequent Trader Program—Volume Corrections Form, is attached as Exhibit 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See e.g.,* NYSE Arca Options Fees and Charges, Customer and Professional Customer Incentive Program and Customer and Professional Customer Posting Credit Tiers in Penny and Non Penny Pilot Issues. *See also* NASDAQ Options Market ("NOM") Options Pricing, Sec. 2 NASDAQ Options Market—Fees and Rebates, Customer and Professional Penny Pilot Options Rebate to Add Liquidity.

Lastly, the Exchange believes the proposed update to the Frequent Trader Program—Volume Corrections Form along with the clarifying, non-substantive and organizational changes maintains clarity in the Form and Fees Schedule, respectively, and avoids potential confusion given the proposed changes to expand the Frequent Trader Program. Alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while the rebates apply only to Customers and Professionals, the proposed change is designed to encourage increased Customer and Professional VIX, SPX and RUT options volume, which provides greater trading opportunities for all market participants. Additionally, the Exchange notes that incentive programs based on Customer and Professional volume already exist elsewhere within the industry.[11] The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because VIX and SPX products are only traded on CBOE and RUT products are only traded on CBOE and C2 Options Exchange, Incorporated. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–068, and should be submitted on or before October 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2016–23322 Filed 9–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78909; File No. SR–BX–2016–046]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Proposed Rule Change To Amend BX Rules 4702 and 4703

September 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rules 4702, Order Types, and 4703, Order Attributes, to change the way in which Post Only Orders interact with resting Non-Display orders and preventing the execution of midpoint pegged orders during a crossed market.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers various Order Types[3] and Order Attributes[4] to help members trade effectively on behalf of investors and themselves. This proposal would modify the manner in which two of those order types, Non-Display and Post Only, interact within BX's trading system.

The Exchange's Non-Display Orders, described in Rule 4702(b)(3), help members minimize market impact when trading in larger-than-average size. For example, institutions often use Non-Display Orders that use pegging at the midpoint (Midpoint Peg Order)[5] of the National Best Bid and Offer (NBBO) to reduce market impact because a midpoint execution does not indicate a price movement direction, as opposed to buying at the offer or selling at the bid (sometimes referred to as "crossing the spread") which may publicly indicate the direction of the stock price.

The Exchange also offers Post Only Orders, described in Rule 4702(b)(4), which members, often market makers, use to rest liquidity on BX's Order Book. Resting displayed liquidity is essential to price formation and order interaction, two indicators of healthy and orderly markets. BX introduced Post Only Orders[6] to enable and encourage this valuable behavior. A Post Only buy (sell) order entered at a price below $1.00 will execute against a resting sell (buy) order if the value of price improvement equals or exceeds the foregone rebate for liquidity provision and fee for removing liquidity. If a Post Only buy (sell) order is entered at a price below $1.00 and is equal to the price of a resting sell (buy) order, the buy (sell) order is repriced one minimum price increment (MPV), generally $0.0001[7] lower (higher) than the resting sell (buy) order's price.

This repricing function, sometimes referred to as "price-sliding," often occurs when a liquidity provider seeking to tighten the bid/offer spread on the Exchange encounters a Non-Display Order on the opposite side of market from the Post Only Order. When this occurs, the displayed spread on the Exchange may become wider than on competing exchanges therefore reducing market quality and the likelihood of execution on the Exchange. In addition, the member entering the Post Only Order learns through the repricing action both that there is a Non-Display Order resting on the book and also the price at which the Non-Display Order is resting. The Exchange believes that this interaction is inefficient and detrimental to investors, to members, and to the market.

Accordingly, the Exchange proposes two changes to the manner in which certain Post Only Orders respond to certain Non-Display Orders resting on the opposite side of the market. In all other instances, there will be no change. For example, Post-Only Orders will continue to execute against resting Non-Display Orders provided the price improvement associated with the execution equals or exceeds the foregone rebate for liquidity provision and fee for removing liquidity for the member entering the Post Only Order, as they do today.

First, a Post-Only Order that is entered with a price below $1.00 and is equal to the price of a resting Non-Display Order will be posted at its limit price (or its adjusted price if applicable),[8] rather than being re-priced as it is today. This allows the Post Only Order to lock the resting Non-Display Order.[9] Both the displayed Post Only order and the resting Non-Display order will remain available for execution at the locking price. In this way, neither order is disadvantaged; the Exchange Bid/Offer spread is tightened; and no signal is sent to the member that entered the Post Only Order. In this scenario, efficacy is maintained or enhanced for both the Post Only Order user and the Non-Display Order user compared to today. For example, under the current rules if a Participant entered a Post-Only Order to buy at $0.95, the Best Offer[10] was $0.97, and there was a Non-Displayed Order on the Exchange Book to sell at $0.95, the Post-Only Order would be ranked and displayed at $0.9499. Using the above scenario, the Exchange is proposing to instead rank and display the Post-Only Order to buy at its limit price of $0.95.

Second, the Exchange also proposes to modify processing when a Post Only Order, priced below $1.00, interacts with a Non-Display Order that is a Midpoint Peg Order. Specifically, when a Post Only buy (sell) order is priced higher (lower) than a resting Midpoint Peg Order but where the difference is less than the foregone rebate for liquidity provision and fee for removing liquidity, the Post Only Order will nonetheless be posted at its limit price. This proposal benefits investors and members because it results in a tighter Bid/Offer spread. Moreover, because the Post Only order is not re-priced relative to the resting Midpoint Peg order, as it is today, there is no information leakage. Additionally, the member entering the Midpoint Peg Order benefits because the new midpoint based on the new NBBO would now be a better price for the seller. Midpoint Peg orders are either cancelled or re-adjusted based on NBBO changes depending on the protocol used by the member to enter the Midpoint Peg Order.[11] For example, under the current rules if the NBBO is $0.92 × $0.97 and a Participant enters a Midpoint Peg Order (which, as stated above, is Non-Displayed) to buy 200 shares with a limit price of $0.96, the

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[3] *See* Exchange Rule 4702. The Exchange also proposes a minor technical correction to add the word "price" after the word "displayed" in the second line of the second paragraph of Rule 4702(b)(4)(B).

[4] *See* Exchange Rule 4703.

[5] *See* Exchange Rule 4702(b)(3)(C).

[6] *See* Post Only order Factsheet: *http://www.nasdaqtrader.com/content/ProductsServices/Trading/postonly_factsheet.pdf.*

[7] Securities priced at or above $1 are quoted in $0.01 increments, below $1, they can be quoted in $0.0001 increments. Post Only behavior is slightly different below $1 because the fees and economics involved in the execution are distinct from those at or above $1. Specifically, executions in securities priced at or above $1 result in rebates for the accessor of liquidity and as such it is always in the best interest of the incoming Post-Only Order to execute in securities at or above $1. *See* Exchange Rule 4702(b)(4)(A). In contrast, executions in securities priced below $1 result in charges to the accessor of liquidity. *Compare* Rules 7018 (a) and (b). In both cases, the Exchange system is programmed to analyze the price improvement offered and to execute only where permitted under its rules.

[8] If a Post-Only Order is received at a price that would lock or cross a Protected Quotations [sic], its price will be adjusted in the same manner as a Price to Comply order (if it is not Attributable) or a Price to Display Order (if it is Attributable). *See* Rules 4702(b)(1) and 4702(b)(4)(A).

[9] The Exchange believes that this condition is consistent with the Regulation NMS prohibition on locked and crossed markets because the Exchange will not be displaying a locked market.

[10] The term "Best Offer" is defined in Exchange Rule 4701(j).

[11] *See* Exchange Rule 4703(d).

Midpoint Peg Order would post to the book at $0.945. If thereafter a Post-Only Order to sell 200 shares at $0.9449 is entered, the Post-Only Order would post and display at $0.9451 and Midpoint Peg Order would be cancelled or readjusted depending on the protocol used to enter the order. Under the proposed change and using the example above, the incoming Post-Only Order to sell 200 shares at $0.9449 would post and display at $0.9449 and the Midpoint Peg Order would be cancelled or re-adjusted depending on the protocol used to enter the order.

In addition, the Exchange proposes to discontinue executing midpoint pegged orders when the NBBO is crossed. Today, the Exchange executes midpoint pegged orders when the NBBO is locked by executing at the locking price and when the NBBO is crossed by executing at the midpoint of the crossed price. Based upon feedback from members and the practice of other exchanges,[12] the Exchange has determined that its current practice of executing midpoint pegged orders during such crossed markets produces sub-optimal execution prices for members and investors. The midpoint of a crossed market is not a clear and accurate indication of a valid price, nor is it indicative of a fair and orderly market. The better result is to simply not execute midpoint orders during crossed markets. To accomplish this, the Exchange will program the trading system to respond to the creation of a crossed NBBO by cancelling existing midpoint pegged orders and rejecting the entry of new midpoint pegged orders. After such order cancellation or rejection, members can resubmit their orders at their discretion without limitation. Accordingly, the Exchange proposes to modify the rule language describing the processing of Orders with the midpoint pegging attribute described in Rule 4703(d).

As set forth below, the Exchange believes the proposed changes will benefit investors and members by addressing certain market inefficiencies that exist on the Exchange, and by improving BX's competitive position against other exchanges that already offer similar processing of resting and non-displayed orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in several ways.

First, the proposed changes will benefit investors and members by tightening bid/offer spreads, thereby enhancing execution quality on the Exchange. Second, members entering Post Only Order users will be able to execute liquidity providing strategies more efficiently. Third, the proposed changes will reduce the signaling created today by the interaction of Post Only and Non-Display Order, and thereby minimize the market impact of larger orders. Fourth, the cancellation or rejection of midpoint pegged orders when the NBBO is crossed will avoid mispriced executions and result in higher overall execution quality for members.

The Exchange believes the proposed changes have no detrimental impact on any member or class of members, or on users of the Post Only or Non-Display Order types or on users of other order types offered by the Exchange. First, the use of Exchange Order types and attributes is voluntary, in that no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order types modified by this proposed rule change. Second, the Exchange believes that the changes proposed herein will not result in any diminution of market quality (execution price, effective spread, fill rate, etc.) for any member entering or interacting with one of the Order types modified by this proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule changes are pro-competitive for several reasons. First, the proposed functionality is designed to compete with exchanges, including BATS and NYSE Arca, which already offer order types that behave similarly to how the Exchanges proposes Post Only and Non-Display Orders behave in the future. Second, the Exchange believes that the proposed rule change will make the Exchange a more competitive execution venue by creating tighter bid/offer spreads and by enhancing execution quality (*i.e.,* achieving increased price improvement, reducing effective spreads, and increasing execution fill rates). Third, the Exchange proposes to offer the same functionality to all members, thereby eliminating potential competitive burden or differential treatment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

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[12] *See, e.g.,* BATS Rule 11.9(c)(9) (no midpoint execution during crossed market); NYSE Arca Rule 7.31(d)(4) (no midpoint execution when the market is locked or crossed).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2016–046 and should be submitted on or before October 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–23324 Filed 9–27–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14854 and #14855]

Kansas Disaster #KS–00097

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 09/16/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/19/2016 through 09/11/2016.

Effective Date: 09/16/2016.

Physical Loan Application Deadline Date: 11/15/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/16/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Sumner
Contiguous Counties:
Kansas: Butler, Cowley, Harper, Kingman, Sedgwick
Oklahoma: Grant, Kay

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14854 B and for economic injury is 14855 0.

The States which received an EIDL Declaration # are Kansas, Oklahoma.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 16, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–23375 Filed 9–27–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14859 and #14860]

Maryland Disaster #MD–00034

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA–4279–DR), dated 09/16/2016.

Incident: Severe Storms and Flooding.

Incident Period: 07/30/2016 through 07/31/2016.

Effective Date: 09/16/2016.

Physical Loan Application Deadline Date: 11/15/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/16/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/16/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Howard

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 148596 and for economic injury is 148606.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–23383 Filed 9–27–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14857 and # 14858]

Pennsylvania Disaster # PA–00071

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

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[15] 17 CFR 200.30–3(a)(12).

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania dated 09/20/2016.

Incident: Flash Flooding.

Incident Period: 08/28/2016.

Effective Date: 09/20/2016.

Physical Loan Application Deadline Date: 11/21/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fayette
Contiguous Counties:
  Pennsylvania: Greene, Somerset, Washington, Westmoreland
  Maryland: Garrett
  West Virginia: Monongalia, Preston

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non–Profit Organizations With Credit Available Elsewhere	2.625
Non–Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non–Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14857 6 and for economic injury is 14858 0.

The States which received an EIDL Declaration # are Pennsylvania, Maryland, West Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 20, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–23382 Filed 9–27–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 9741]

Certification Related to Foreign Military Financing for Colombia Under Section 7045(b)(2) of The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113)

Pursuant to the authority vested in the Secretary of State, including under section 7045(b)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113) and Department of State Delegation of Authority 245–1, I hereby certify and report that:

(1) Cases involving members of the Colombian military who have been credibly alleged to have violated human rights, including those in positions with command authority who ordered or covered up such crimes, are subject only to civilian jurisdiction, the Colombian military is cooperating with civilian authorities in such cases, and military officers credibly alleged to have committed gross violations of human rights are removed from positions with command authority until the completion of judicial proceedings and appropriately punished if convicted;

(2) the Government of Colombia is upholding its international obligations by holding accountable persons responsible for crimes against humanity, war crimes, and other gross violations of human rights, and is not offering amnesty to such persons; and

(3) the Government of Colombia is continuing to dismantle illegal armed groups, taking effective steps to protect the rights of human rights defenders, journalists, trade unionists, and other social activists, and respecting the rights and territory of indigenous and Afro-Colombian communities.

This Certification shall be published in the **Federal Register** and, along with the accompanying Report and Memorandum of Justification, shall be transmitted to the appropriate committees of Congress.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–23426 Filed 9–27–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9740]

Culturally Significant Objects Imported for Exhibition Determinations: "World War I and American Art" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "World War I and American Art," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Pennsylvania Academy of the Fine Arts, Philadelphia, Pennsylvania, from on or about November 4, 2016, until on or about April 9, 2017, at the New-York Historical Society, New York, New York, from on or about May 26, 2017, until on or about September 3, 2017, at the Frist Center for the Visual Arts, Nashville, Tennessee, from on or about October 6, 2017, until on or about January 28, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 21, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–23440 Filed 9–27–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9739]

Culturally Significant Object Imported for Exhibition Determinations: "Nuit d'été (Summer Night)" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Nuit d'été (Summer Night)," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Harvard Art Museums, Cambridge, Massachusetts, from on or about October 12, 2016, until on or about July 18, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 21, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–23464 Filed 9–27–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2016–9156]

Hazardous Materials: Emergency Restriction/Prohibition Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Emergency Restriction/Prohibition Order.

SUMMARY: This notice provides Emergency Restriction/Prohibition Order No. FAA–2016–9156, issued September 16, 2016 to Braille Battery, Inc. The Emergency Order prohibits Braille Battery from offering for transportation and transporting, any lithium ion battery that is not in compliance with the HMR or the International Civil Aviation Organization (ICAO) Technical Instructions as permitted in the HMR; requires Braille Battery to maintain and make publicly available the complete test record issued by the testing facility for each lithium ion battery manufactured by Braille Battery proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria; requires Braille Battery to notify third party vendors that may offer for transportation, or transport, via air any lithium ion battery manufactured by Braille Battery that the third party vendor should not offer for transportation, nor transport, via air a Braille Battery lithium ion battery until Braille Battery confirms that the lithium ion battery is of a design type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria; prohibits Braille from using any "hazmat employee" that has not received training in accordance with the HMR; and prohibits Braille Battery from offering for transportation, or transporting, by air any hazardous materials requiring a DOT specification or UN standard packaging unless Braille Battery follows the applicable packing and closure instructions.

DATES: *Effective Date:* The Emergency Restriction/Prohibition Order provided in this notice was effective September 16, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Landers, Office of the Chief Counsel, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone: (404) 305–5200; email: *ryan.landers@faa.gov.*

SUPPLEMENTARY INFORMATION: As required by 49 CFR 109.19(f)(2), the full text of Emergency Restriction/Prohibition Order No. FAA–2016–9156 issued September 16, 2016 is as follows:

This notice constitutes an Emergency Restriction/Prohibition Order (Order) by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. 5121(d) and 49 CFR 109.17(a); and pursuant to delegation of authority to the Administrator, Federal Aviation Administration (Administrator), United States Department of Transportation. This Order is issued to Braille Battery, Inc., (Braille Battery) 6935 15th St. E Bldg 115, Sarasota, FL 34243. Upon information derived from recent Braille Battery lithium ion battery shipments and subsequent FAA investigations, the Administrator has found violations of the Federal Hazmat law (49 U.S.C. 5101, *et seq.*) or the Hazardous Materials Regulations (HMR) (49 CFR parts 171 to 180); an unsafe condition, and that an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, Braille Battery's continued offering of lithium ion batteries for transport via air that are neither proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, nor properly classified and packaged, constitutes an imminent hazard under 49 U.S.C. 5121(d) and 5102(5). For more detailed information see "Background/Basis for Order" below.

Effective Immediately Braille Battery

(1) Shall not offer for transportation, nor transport, via air any lithium ion battery that is not in compliance with the HMR or the International Civil Aviation Organization (ICAO) Technical Instructions as permitted in the HMR. This includes, but is not limited to, all (1) lithium ion batteries of a design type that has not been proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, (2) lithium ion batteries of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, but exceed the watt-hour (Wh) rating limitations for the lithium ion battery type that meets the criteria, and (3) lithium ion batteries not properly packaged and prepared in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions.

(2) Shall, for each lithium ion battery manufactured by Braille Battery proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, maintain and make publicly available the complete test record issued by the testing facility. If Braille Battery does not possess the complete test record issued by the testing facility for any lithium ion battery it manufactures, Braille Battery must immediately contact the testing facility(s) and obtain the complete test record. To assist third-party vendors and carriers in confirming that Braille Battery lithium ion batteries are in compliance with part III, sub-section 38.3 of the UN Manual of Tests and Criteria, Braille Battery must make the complete test record by the testing

facility available via an internet Web site. While this Order is in effect and prior to offering or transporting via air, Braille Battery must add to the internet Web site any and all new test records obtained to show that its lithium ion battery(s) are of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Additionally, Braille Battery must provide to the FAA any and all new test records showing that its lithium ion battery(s) are of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria prior to offering them for transportation, or transporting, via air.

(3) Shall notify any and all third party vendors that may offer for transportation, or transport, via air any lithium ion battery manufactured by Braille Battery that the third party vendor should not offer for transportation, nor transport, via air a Braille Battery lithium ion battery until Braille Battery confirms that the lithium ion battery is of a design type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria.

(4) Shall not utilize any "hazmat employee" (49 CFR 171.8) not properly trained in accordance with the HMR (49 CFR 172.700–704 and/or 173.185(c)(4)(v)) to perform a specific hazmat function covered by the HMR. This includes, but is not limited to, function-specific training concerning the requirements specifically applicable to the functions the employee performs (49 CFR 172.704(a)(2)). Braille Battery shall not utilize any hazmat employee trained per the HMR to perform the classification and packing function for air transportation if the hazmat employee does not demonstrate the ability to properly classify and package a lithium ion battery in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions.

(5) Shall not offer for transportation, nor transport, by air any hazardous materials requiring a DOT specification or UN standard packaging unless Braille Battery follows the applicable packing and closure instructions.

This Order applies to Braille Battery, its officers, directors, employees, subcontractors, and agents. This Order is effective immediately and remains in effect unless rescinded in writing by the Administrator or his designee, or until it otherwise expires by operation of law.

Jurisdiction

The Secretary has the authority to regulate the transportation of lithium ion batteries in commerce. 49 U.S.C. 5103(b). The Secretary has designated lithium ion batteries, UN 3480, as a hazardous material subject to the requirements of the HMR. 49 U.S.C. 5103(a); 49 CFR 172.101. The Administrator has the authority to carry out the functions vested in the Secretary by 49 U.S.C. 5121 relating to the transportation or shipment of hazardous materials by air. 49 CFR 1.83(d)(1). Braille Battery offers for transportation or transports hazardous materials in commerce within the United States and therefore is a "person", as defined by 49 U.S.C. 5102(9), in addition to being a "person" under 1 U.S.C. 1 and a "person who offers" as defined by 49 CFR 171.8. Commerce is as defined by 49 U.S.C. 5102(1) and 49 CFR 171.8, and "transportation" or "transport" are as defined by 49 U.S.C. 5102(13) and 49 CFR 171.8. Accordingly, Braille Battery is subject to the authority and jurisdiction of the Administrator including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard. 49 U.S.C. 5121(d).

Background/Basis for Order

A. Lithium Ion Battery HMR Requirements

Shipping hazardous materials is inherently dangerous. The HMR and the ICAO Technical Instructions requirements for shipping lithium ion batteries via air, including the requirements that lithium ion batteries be properly classified, packaged, and of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, are meant to protect people and property. Lithium ion batteries not in compliance with these requirements may not be offered or transported via air. Braille Battery, as a lithium ion battery manufacturer, is responsible for ensuring that each lithium ion battery it manufactures is of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria before it is offered for transportation or transported. Furthermore, Braille Battery is responsible for ensuring that any lithium ion battery it offers for transportation, or transports, via air is properly classified and packaged. This Order ensures that Braille Battery lithium ion battery shipments will be transported in compliance with the HMR or the ICAO Technical Instructions.

B. Braille Battery Lithium Ion Battery Shipments

Upon reliable and credible information received in the course of investigations, the Administrator has learned Braille Battery is offering for air transport lithium ion batteries that do not meet the HMR or ICAO Technical Instructions requirements. On June 6, 2016, the FAA received notice from Federal Express regarding a Federal Express delivery truck that caught fire on June 3, 2016. In its notification, Federal Express indicated that four separate lithium ion battery packages offered by Braille Battery were onboard the delivery truck that caught fire. All four packages were offered for air transport and were transported via air prior to being loaded on the delivery truck that caught fire. Federal Express believes that one of the packages caused the fire.[1]

The FAA began an investigation into Braille Battery's shipment of lithium ion batteries. The investigation revealed that Braille Battery manufactured and offered for air transport the lithium ion batteries onboard the Federal Express delivery truck that caught fire on June 3, 2016. The investigation also revealed that Braille Battery does not have proof that the four Braille Battery lithium ion batteries meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Further investigation found that Braille Battery possessed a three-page report allegedly issued by Intertek showing that the Braille Intensity and Braille Intensity 24v lithium ion batteries meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. However, Braille Battery could not produce the complete test report, and Intertek denies ever testing the Braille Intensity or Braille Intensity 24v lithium ion batteries or creating the summary report.

On June 15, 2016, FAA representatives notified Braille Battery that it could not transport lithium ion batteries lacking proof that they meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Between July 14, 2016 and August 19, 2016, Braille Battery offered 20 lithium ion battery shipments for air transport to DHL Express. The 20 lithium ion battery shipments offered to DHL Express included approximately 103 lithium ion batteries. At least 3 of the lithium ion batteries were not of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. An additional 61 of the 103 lithium ion batteries offered to DHL

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[1] The National Transportation Safety Board is investigating the cause of the fire.

Express are currently being investigated to determine if they meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria.

C. Braille Battery Classification and Packaging

The FAA's investigation also revealed that none of the above-referenced 103 lithium ion batteries offered to DHL Express were likely in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions. Braille Battery employees who classify, prepare, and package lithium ion batteries for shipment fail to understand their function-specific requirements of how to properly classify or package a lithium ion battery under 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions. During a follow-up inspection at Braille Battery on September 7–8, 2016, the hazmat employees responsible for classification and packaging did not follow the UN specification box instructions.

Braille utilizes three Labelmaster UN specification boxes for lithium ion battery air transport shipments: (1) UA121212BSR; (2) UA151010BS; and (3) UA151414BS. The hazmat employees performing packaging did not follow the instructions for the three UN specification boxes. All three UN specification boxes provided the following warning as to proper packaging: "This closure instruction includes the assembly procedures for this packaging design. Substitution of materials or a change to these closure instructions may cause non-compliance with regulations and void the test certification for the packaging."

The packaging instructions for UN specification boxes UA121212BSR, UA151414BS, and UA151010BS all require the use of a liner bag and nylon ties around the article. Braille Battery hazmat employees were not utilizing the liner bags or nylon ties when packaging lithium ion batteries in the UN specification boxes UA121212BSR, UA151414BS, and UA151010BS. The packaging instructions for UN specification boxes UA121212BSR and UA151010BS also require that an absorbent pad be placed in the liner bag. Braille Battery hazmat employees did not understand that the absorbent pad was required, and Braille Battery did not possess the required absorbent pads when UN specification boxes UA121212BSR and UA151010BS were used. Additionally, UN specification boxes UA121212BSR and UA151414BS require the use of "3M 372 tape" and UN specification box UA151010BS requires the use of "3 mil, 3" wide hot melt tape" when closing the specification box. Braille Battery did not possess the required closure tape for any of the three UN specification boxes at any time when Braille Battery used the three UN specification boxes in the above-referenced shipments.

The Braille Battery hazmat employees' failure to properly prepare the UN specification boxes for lithium ion battery air shipments resulted in the lithium ion battery packages that appeared to carriers to be in compliance with the applicable HMR or ICAO Technical Instructions, Packing Instruction 965, but were actually not safe for air transportation.

D. Finding of Imminent Hazard

An imminent hazard, as defined by 49 U.S.C. 5102(5) and 49 CFR 109.1, constitutes the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of death, illness, injury or endangerment. Shipments of lithium ion batteries that do not meet all the HMR or ICAO Technical Instructions requirements, including not meeting the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria and proper classification and packaging, may be of a design or condition that cannot be safely transported via air. They may cause an ignition or a dangerous evolution of heat or become a fuel source for fire. Just one fire incident poses a high risk of death, serious illness, severe personal injury, and danger to property and the environment. This risk is magnified when the fire or evolution of heat occurs aboard an aircraft during flight.

Further, Braille Battery's overall conditions and practices, including Braille Battery's (a) failure to adequately train its employees to ship the lithium ion batteries in accordance with the HMR and ICAO Technical Instructions, and (b) continued offering for air transport lithium ion batteries that were not tested in accordance with the UN Manual of Tests and Criteria despite FAA warnings, when taken together, constitute an imminent hazard.

Therefore, each continued offering and transportation of these untested, improperly classified and packaged lithium ion batteries constitutes an imminent hazard.

Remedial Action

To eliminate or abate the imminent hazard, Braille Battery must, prior to offering for transport or transporting via air, ensure that each lithium ion battery fully complies with all HMR or ICAO Technical Instructions requirements for lithium ion battery air transport. This includes maintaining a record of proof that the lithium ion battery type meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria and notifying third-party vendors that they should not ship via air a Braille Battery lithium ion battery of a type lacking proof that it meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. This also includes ensuring that Braille Battery air transport shipments containing lithium ion batteries are classified and packaged in accordance with the HMR or ICAO Technical Instructions. Additionally, while this Order is in effect and prior to offering for transport or transporting via air, Braille Battery must, adequately demonstrate to the FAA that its employees can properly classify and package a lithium ion battery. For each DOT or UN specification box Braille Battery intends to use for lithium ion battery shipments, Braille Battery employees must demonstrate to the FAA that they understand the DOT or UN specification box instructions and can successfully package a lithium ion battery following those instructions.

Rescission of This Order

This Order remains in effect until the Administrator determines that an imminent hazard no longer exists or a change in applicable statute or Federal regulation occurs that supersedes the requirements of this Order. Before Braille Battery may offer for transportation and/or transport any package subject to this Order, Braille Battery must be able to adequately demonstrate to the Administrator that its lithium ion battery shipments comply with all HMR requirements, including (1) having proof that the battery type meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, and (2) that Braille Battery has trained all employees in accordance with how to classify and package a lithium ion battery in accordance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions, and (3) Braille Battery follows all relevant closure instructions for UN or DOT specification packagings. After Braille Battery makes such demonstration for all lithium ion battery models it manufactures and offers for transportation via air, the Administrator will issue a Rescission Order. Until the Administrator has issued the Rescission Order, Braille Battery must not offer or transport via air any package covered by this Order.

Failure To Comply

Braille Battery or any person failing to comply with this Order is subject to civil penalties up to $179,933 for each violation for each day they are found to be in violation (49 U.S.C. 5123). A person violating this Order may also be subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. 5124).

Right To Review

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 500, *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this Order (49 U.S.C. 5121(d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue SE., Washington DC 20590–0001 (ATTENTION: Office of Chief Counsel) (electronically to *PHMSACHIEFCOUNSEL@DOT.GOV*) and one copy addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 (*http://Regulations.gov* under Docket #FAA–2016–9156) (49 CFR 109.19). Furthermore, one copy must be addressed to Federal Aviation Administration, United States Department of Transportation, 800 Independence Avenue SW., Washington DC 20591 (ATTENTION: Office of Chief Counsel, AGC–1) (49 CFR 109.19).

A petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. 554, the petition must state that a formal hearing is requested and must identify the material facts in dispute giving rise to the request for a hearing (49 CFR 109.19). A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M–20, Room E12–320, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590 (FAX: (202) 366–7536).

Emergency Contact Official

If you have any questions concerning this Emergency Restriction/Prohibition Order, you should call Office of Hazmat Safety, at 202–437–7651.

Issued in Washington, DC, on September 22, 2016.

Reginald C. Govan,

Chief Counsel, Federal Aviation Administration.

[FR Doc. 2016–23332 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected pursuant to existing regulatory provisions. The FAA requires certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such programs to the FAA.

DATES: Written comments should be submitted by October 28, 2016.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0660.

Title: Flight Operational Quality Assurance (FOQA) Program.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 6, 2016 (81 FR 44087). There were no comments. The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. FOQA can provide an objective source of information for FAA decision making, including identification of the need for new rulemaking based on observed trends in FOQA data. Title 14, Code of Federal Regulations (14 CFR), Subpart 13.401, stipulates that the FAA does not use FOQA information in punitive enforcement action against an air carrier or its employees, when that air carrier has an FAA approved FOQA program. There are no legal or administrative requirements that necessitate this rule. The rule is intended to encourage the voluntary implementation of FOQA programs in the interest of safety enhancement.

Respondents: 60 airline operators.

Frequency: Information is collected monthly.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 720 hours.

Issued in Washington, DC, on September 21, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.

[FR Doc. 2016–23419 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Land Use Change and Release of Grant Assurance Restrictions at the Oceano County Airport, Oceano, San Luis Obispo County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a non-aeronautical land-use change.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a land-use change for approximately .834 acres of airport property at Oceano County Airport, Oceano, California. The land use change will permit the release of the aeronautical use provision of the Grant Assurances that require it to serve an airport purpose since the land is not needed for aeronautical uses. The released land will be used for storm drainage improvements intended to enhance the existing drainage system in the southerly portion of the Oceano community adjacent to the east portion of the Oceano County Airport. The project will also reduce existing runoff on airport property as well as alleviate an existing drainage problem on Highway 1 at 13th Street. The fair market value will be paid for the land and thereby serve the interest of civil aviation.

DATES: Comments must be received on or before October 28, 2016

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. James W. Lomen, Manager, Federal Aviation Administration, San Francisco Airports District Office, **Federal Register** Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Dave Flynn, Deputy Director of Public Works, County of San Luis Obispo, 1055 Monterey St., San Luis Obispo, CA 93408.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of San Luis Obispo, California requested a modification to the conditions in the Grant Assurances to permit the non-aeronautical use of .834 acres of land at Oceano County Airport for the construction, maintenance, and operation of a permanent concrete sedimentation basin that is to be constructed below grade and that will collect and control surface water runoff from Airport and off-airport property. The land subject to the release is part of a larger 6.3-acre parcel that is currently being used for recreational vehicle (RV) storage on a month-to-month agreement. Drainage collected in the basin will ultimately flow to Arroyo Grande Creek via an existing airport drainage basin lying westerly of and adjacent to the proposed concrete basin. The new storm drain system will be located in the east portion of the Airport and will enhance the existing drainage facilities that serve the Oceano community since most of the Airport lies within the 100-year flood plain. The project will reduce existing runoff on airport property and alleviate a drainage problem on Highway 1 at 13th Street. Fair market value will be paid for the property and rental revenue will continue to be collected for the portion of land (5.466 acres) that continues to be used for RV storage. As a result, this project will reduce storm water runoff, preserve the RV storage rental revenue, and serve the interest of civil aviation.

Issued in Brisbane, California, on September 15, 2016.

Arlene B. Draper,

Assistant Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2016–23417 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Disposal of Aeronautical Property at Everett-Stewart Regional Airport, Union City, TN (UCY)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by Obion County, to release three parcels of land (8.48 acres) at Everett-Stewart Regional Airport from federal obligations.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, Attn: Tommy L. Dupree, Assistant Manager, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allen C. Gooch, Board Chairman, Everett-Stewart Regional Airport at the following address: 1489 Airport Road, Union City, TN 38261.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Assistant Manager, Federal Aviation Administration, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property for disposal at Everett-Stewart Regional Airport, 1489 Airport Road, Union City, TN 38261, under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at Everett-Stewart Regional Airport (UCY) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of these properties does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

This release will be retroactive for property conveyances from 1963, 2010, and 2014. The request consists of the following:

A 1.7 acre parcel was conveyed to the Poplar Meadows Country Club in 1963 to improve the golf course. This property is contiguous to the airport, located south of the terminal area development and 750 feet west of Airport Road. This property is a part of the 749.94 acre parcel conveyed from the United States of America with obligations to Obion County in 1947.

A 5.84 acre parcel was conveyed to Obion County as right of way for Airport Road construction improvements in October 2010. This property is contiguous to the airport located approximately 400 feet south of Tennessee Highway 431 along Airport Road. This property is part of a 109.67 acre parcel conveyed from the United States of America with limited obligations to Obion County in 1947.

A 0.94 acre parcel was conveyed to Stanley Chapel Church for improvements in February 2014. This property is non-contiguous to the airport on Stanley Chapel Church Road located 800 feet west of Airport Road. This property is a part of a 109.67 acre parcel conveyed from the United States of America with limited obligations to Obion County in 1947.

This request will release these three properties from federal obligations. This action is taken under the provisions of 49 U.S.C. 47107(h)(2).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Everett-Stewart Regional Airport.

Issued in Memphis, Tennessee, on September 19, 2016.

Tommy L. Dupree,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2016–23425 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0024]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 25 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted May 13, 2016. The exemptions expire on May 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 12, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 21655). That notice listed 25 applicants' case histories. The 25 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 25 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 25 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, branch retinal vein occlusion, choroidal macular scar, complete loss of vision, corneal scar, exotropia, incomplete macular formation, ischemic optic neuropathy, macular degeneration, macular scar, morning glory syndrome, optic atrophy, refractive amblyopia, strabismic amblyopia, and a torn iris. In most cases, their eye conditions were not recently developed. Seventeen of the applicants either were born with their vision impairments or have had them since childhood.

The 8 individuals that sustained their vision conditions as adults have had them for a range of 4 to 31 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 25 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 4 to 45 years. In the past three years, no drivers were involved in crashes and 1 driver was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 12, 2016, notice (81 FR 21655).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 25 applicants, no drivers were involved in crashes and 1 driver was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 25 applicants listed in the notice of April 12, 2016, (81 FR 21655.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 25 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized

Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received one comment in this proceeding. An anonymous commenter favored granting the exemptions.

VI. Conclusion

Based upon its evaluation of the 25 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Stanley W. Ahne (OK)
Marvin D. Bass (KY)
Daniel L. Castonguay (ME)
William A. Crandall, Jr. (NY)
James T. Curtis (NM)
Jacob M. Dellinger (NC)
Mark E. Dow (VT)
Richard R. Filion (VT)
Louis J. Floquet Jr. (CA)
Joshua V. Harrison (NJ)
Jason G. Joyner (KS)
Thomas M. Kaley, Jr. (PA)
William J. Krysinski (MN)
Bradley K. Linde (IA)
Pedro Martinez (NM)
Ty N. Mason (PA)
Ralph A. Milliman (IL)
Donald A. Orloski (PA)
Alan R. Piroso (NH)
Juan C. Ramirez (OH)
Erik J. Rowland (NY)
Colby T. Smith (UT)
Carl J. Warnecke (OH)
Edwin E. West (MO)
Donald E. Wojtaszek

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23361 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0028]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 37 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted July 18, 2016. The exemptions expire on July 19, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 16, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 39320). That notice listed 37 applicants' case histories. The 37 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 37 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 37 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, central serous chorioretinopathy, complete loss of vision, corneal scar, dense corneal scar, macular scar, macular telangiectasia, optic nerve damage, optic nerve hypoplasia, phthisis bulbi, prosthetic eye, ptosis, refractive amblyopia, retinal detachment, strabismic amblyopia, and vision loss. In most cases, their eye conditions were not recently developed.

Twenty-nine of the applicants were either born with their vision impairments or have had them since childhood.

The 8 individuals that sustained their vision conditions as adults have had them for a range of 3 to 25 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 37 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 39 years. In the past three years, no drivers were involved in crashes and 4 drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 16, 2016, notice (81 FR 39320).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 37 applicants, no drivers were involved in crashes, and 4 drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 37 applicants listed in the notice of June 16, 2016 (81 FR 39320).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 37 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received 3 comments in this proceeding. Patience Agbodzie, a medical examiner from Pennsylvania, stated she finds the publication to be very informative and is interested to learn who will or will not receive an exemption. Blake Ishizu stated he believes that drivers who meet the criteria for the exemption should be granted the exemption. Deb Carlson stated that the state of Minnesota has no concerns with granting exemptions to Joel Nundahl and Kenneth Erickson.

IV. Conclusion

Based upon its evaluation of the 37 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Dennis J. Ameling (IA)
Daniel A. Bahm (FL)
John P. Brooks (IL)
Joshua L. Cecotti (WA)
Derrick L. Cowan (NC)
Ryan E. Cox (WI)
Ronald A. Donsbach (MT)
Kenneth W. Erickson (MN)
Anthony A. Gusa (MI)
Pedro Guzman (TX)
Bradley C. Helsel (OR)
Titus E. Hostetler (MS)
Darrell E. Hunter (NC)
Charles R. Johnson (MN)
Kenneth B. Julian (OK)
Walter J. Jurczak (NJ)
Keith Kebschull (IL)
Jeffrey N. Lake (IL)
Jayme M. Leonard (VT)
Christopher E. Madsen (IA)
James K. Matthey (PA)
Brian D. McClanahan (IL)
Mark Mitchell (MI)
Joel E. Nundahl (MN)
Kent A. Perry (WY)
Richard C. Powers (TX)
Mario A. Quezada (TX)
Guadalupe Reyes (FL)
J.B. Rodriguez Mata (TX)
Joseph Sais (NM)
John M. Sexton (CA)
Blaine R. Sherfinski (WA)
Chad M. Smith (IA)
Corey L. Spring (AR)
Leslie D. Wallace (MO)
James C. Wechsler (OR)
Danny A. Wright (IN)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 19, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23363 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0029]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 23 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted July 29, 2016. The exemptions expire on July 29, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 28, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 42054). That notice listed 23 applicants' case histories. The 23 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 23 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 23 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, central chorioretinitis, complete loss of vision, glaucoma, macular hole, macular pigment epithelial detachment, macular scar, ocular histoplasmosis, optic nerve hypoplasia, prosthetic eye, and refractive amblyopia. In most cases, their eye conditions were not recently developed. Thirteen of the applicants were either born with their vision impairments or have had them since childhood.

The 10 individuals that sustained their vision conditions as adults have had them for a range of 5 to 40 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 23 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 1.5 to 53 years. In the past three years, two drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 28, 2016, notice (81 FR 42054).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 23 applicants, two drivers were involved in crashes and no drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 23 applicants listed in the notice of June 28, 2016 (81 FR 42054.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 23 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received 2 comments in this proceeding. Deb Carlson states that the state of Minnesota is in favor of granting David L. Evers the exemption. The other comment submitted was not related to this notice.

IV. Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Patrick R. Beallis (IL)
Gary A. Brown (PA)
Dudley G. Diebold (CT)
David L. Evers (MN)
John M. Harris (MS)
Raymond E. Hogue (PA)
Michael E. Jones (IL)
Robert L. Jones (FL)
Richard A. Kolodziejczyk (CT)
Dean A. Lardieri (NJ)
Darius R. Law (FL)
Robert C. Martin (WA)
Mark W. Mc Taggart (IL)
Hobie S. Morse (AR)
Noel Munoz (NM)
Frank C. Newberry (ID)
Peter J. O'Connell (PA)
James M. Paul (AL)
Ivan Romero (IL)
Richard M. Rosales (NM)
Jeffrey L. Tanner (WY)
Steve A. Taylor (NC)
Donald P. Winters (VA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23359 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted June 2, 2016. The exemptions expire on June 2, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On May 2, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 26305). That notice listed 22 applicants' case histories. The 22 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 22 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 22 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, chorioretinal scar, corneal ectasia, exotropia, macular scarring, maculopathy, prosthetic eye, refractive amblyopia, retinal detachment, retinal scar, and scarring. In most cases, their eye conditions were not recently developed. Thirteen of the applicants were either born with their vision impairments or have had them since childhood.

The 8 individuals that sustained their vision conditions as adults have had them for a range of 3 to 47 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 22 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 2 to 43 years. In the past three years, 1 driver was involved in a crash and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 2, 2016, notice (81 FR 26305).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 22 applicants, 1 driver was involved in a crash, and no drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 22 applicants listed in the notice of April 12, 2016 (81 FR 26305.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 22 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Michael J. Baca (NM)
Felix Barajas Ramirez (IL)
Curtis W. Bottorf (PA)
Ronnie E. Boyd (MN)
Laurence R. Casey (MA)
Jon C. Dillon (MN)
Richard W. Ellis (IA)
Shorty Ellis (NC)
Gregory T. Garris (OK)
James R. Hammond (OH)
Russell P. Kosinko (PA)
Christopher B. Liston (TN)
Larry D. Miller (MO)
Mickael P. Miller (LA)
Benny D. Patterson (OH)
James A. Patterson (OH)
Jose R. Pitre Rodriguez (FL)
John Rueckert (SD)
Joseph W. Schmit (NE)
Douglas R. Strickland (NC)
Vladimir Szudor (FL)
Marvin S. Zimmerman (PA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 19, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23355 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0030]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 18 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted August 12, 2016. The exemptions expire on August 12, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On July 12, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 45214). That notice listed 18 applicants' case histories. The 18 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 18 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 18 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, blindness, cataract, central scotoma, complete loss of vision, corneal scar, exotropia, panuveitis, prosthetic eye, optic atrophy, and retinal scar. In most cases, their eye conditions were not recently developed. Thirteen of the applicants were either born with their vision impairments or have had them since childhood.

The 5 individuals that sustained their vision conditions as adults have had them for a range of 7 to 16 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 18 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 40 years. In the past three years, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 12, 2016, notice (81 FR 45214).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the

18 applicants, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 18 applicants listed in the notice of July 12, 2016 (81 FR 45214).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 18 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

VI. Conclusion

Based upon its evaluation of the 18 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Travis A. Beckum (GA)
Steve Benton (TX)
Caleb E. Boulware (KS)
David E. Campbell (NY)
James G. Cothren (GA)
Nenad Harnos (NJ)
Matthew D. Hormann (MN)
James W. Jones (AL)
Louis M. Jones (LA)
Duane R. Martin (PA)
Roger S. Orr (IA)
Johnny A. Peery, Jr. (MD)
J.W. Ray (ID)
Richard D. Shyrock (MO)
Steven D. Sodders (OH)
Jerry M. Stearns, Jr. (AR)
Keith R. Tyler (NC)
James L. Yingst (IL)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23357 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0111]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the International Institute of Towing and Recovery

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from the International Institute of Towing and Recovery (IITR) (on behalf of the Towing and Recovery Association of America (TRAA) and the towing and recovery industry) to allow commercial motor vehicle operators to secure automobiles, light trucks, and vans using a total of four tiedowns—two fixed and two adjustable—instead of using a minimum of two tiedowns, both of which need to be adjustable. While the Federal Motor Carrier Safety Regulations (FMCSRs) require each tiedown, or its associated connectors or attachment mechanisms, to be adjustable, IITR believes that the use of four tiedowns instead of the two that are minimally required by the FMCSRs to secure automobiles, light trucks, and vans will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption even though two of the four tiedowns are not adjustable. IITR is requesting the temporary exemption in advance of petitioning FMCSA to conduct a rulemaking to amend 49 CFR 393.112.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2016–0111 using any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation,

Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the "Privacy Act" heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site as well as the DOT's *http://docketsinfo.dot.gov* Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mrs. Amina Fisher, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–2782, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

IITR's Application for Exemption

IITR has applied for an exemption from 49 CFR 393.112 to allow the use of two non-adjustable tiedowns in addition to the two adjustable tiedowns currently required. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.112 of the FMCSRs, "Must a tiedown be adjustable?" states "Each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them." Section 393.128, "What are the rules for securing automobiles, light trucks and vans?", states in paragraph (b)(1) that "Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns."

In its application, IITR states:

> The use of chains as a tiedown securement has been an industry standard for many years. While there are other methods of securement many operators believe that properly rated chains are the best option for securement of heavy loads. A tiedown chain is secured to the vehicle at one end of the load, adjusted for length and then dropped into a keyhole slot. Then at the other end of the vehicle, tiedowns are secured, and then the tension for the cargo securement is adjusted by using a chain binder ratchet assembly. Tightening one end of the assembly also tightens the other end.
>
> As an example of current industry practice, once the disabled vehicle has been winched forward onto the carrier bed a safety chain is installed to prevent rollback. Two tiedown chains are then attached to the rear of the disabled vehicle, dropped through two of the keyhole slots at the rear of the carrier bed, and snugged up or adjusted by using the winch to remove any slack in the chains. Then two chains or straps are attached and ratcheted to secure the front of the vehicle. Tightening the two front tiedowns subsequently tighten the two rear tiedowns.
>
> 49 CFR 393.112 states that each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. Looking at the definition of a tiedown and "its associated connectors" and the method by which a disabled vehicle is secured to the carrier bed, each chain or tiedown is completely adjustable. Specifically in the example above, when a chain is dropped into a keyhole slot the length of the chain is easily adjustable and the tension can be further adjusted by either the winch, tilt of the bed, or a chain binder or ratchet assembly—by tightening the front end of the tiedown assembly the rear is also tightened.
>
> As a further note, using only two chains as prescribed in 393.128, one at the front and one at the rear, may not meet the cargo securement performance requirements of 0.8g as described in 393.102, particularly in hard stop or crash situations.
>
> The towing and recovery industry faces the continuing challenge of operating in the safest and most expeditious manner. Following the current roadside enforcement interpretations of 393.112 and 393.128 and how they are being enforced will push tow operators into using one chain on the front and one on the rear of the disabled vehicle, which the industry considers to be a "shortcut". Using only two chains in this manner could easily result in the disabled vehicle moving on the bed, leading to possible loss of control of the truck, leading to possible injuries and/or death.

The exemption would apply to all car carrier-type tow trucks. IITR believes that using two non-adjustable tiedowns in addition to the two adjustable tiedowns minimally required will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on IITR's application for an exemption from 49 CFR 393.112. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23358 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0489]

Commercial Driver's License Standards: Application for Exemption; State of Idaho, Idaho Transportation Department (ITD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces that it has denied an application for exemption from the requirement that third-party commercial driver's license (CDL) testers maintain a bond in an amount determined by the State that employs them. The bond is intended to be sufficient to pay for re-testing drivers in the event that the third party or its examiners is involved in fraudulent activities related to CDL skills testing. The Division of Motor Vehicles, Idaho Transportation Department (ITD) submitted the application for exemption. FMCSA published ITD's application, reviewed the public comments received, and denied the application because available information did not allow the Agency to conclude that the proposed exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained absent the exemption.

DATES: FMCSA denied the application for exemption by letter dated August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

ITD Application for Exemption

The Idaho Transportation Department (ITD) is responsible for State transportation infrastructure and oversees the disbursement of Federal, State, and grant funding for Idaho transportation programs.

The ITD applied for an exemption from the regulations in 49 CFR 383.75(a)(8)(v) that require third party testers to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of CDL applicants. The ITD requested the exemption because the regulation creates a financial hardship for testing examiners who must be bonded but conduct only a few tests monthly. ITD said that the State has had no instances of fraud in its third-party testing organizations.

Public Comments

On March 9, 2016, FMCSA published in the **Federal Register** notice of the ITD application and requested public comment (81 FR 12443). The Agency received three comments, all of which opposed the exemption. One commenter objected to all exemptions in general. The Commercial Vehicle Training Association stated that exempting Idaho from the bond requirement is unnecessary because the State has the authority to determine what the amount of these bonds should be. Therefore, if Idaho determines that the current bond requirement is too high, it can simply reduce the requisite amount. The Surety and Fidelity Association of America listed various reasons why a surety bond has value to the State and is in the public interest.

No commenters supported the ITD exemption request.

FMCSA Decision

The Agency's decision is based upon the information provided by the applicants, and its review of comments received in response to the **Federal Register** notice. The Agency concluded that the ITD application failed to demonstrate how by eliminating the requirement for third party testers to initiate and maintain a bond would achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. The Agency believes the regulation provides the proper balance, protecting the public interest while imposing only minimal costs on small third-party testers. The bond requirement is a business standard that not only provides a higher degree of assurance that the CDL tests performed meet FMCSA and State requirements, but that the tests are also performed by qualified individuals as agents of the State. ITD did not provide any data, studies or research supporting its request, or explain why a reduced bond amount would not achieve the same result as an exemption. Therefore, the Agency cannot determine that ITD's proposed exemption would meet the statutory requirement to maintain the required levels of safety. Accordingly, FMCSA denied ITD's application for exemption by letter dated August 8, 2016.

Issued on: September 14, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23369 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0025]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted May 13, 2016. The exemptions expire on May 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 12, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 21647). That notice listed case histories of 11 applicants. The 11 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10) for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 11 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 11 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, complete loss of vision, corneal opacity, decreased vision, macular atrophy, macular degeneration, macular scar, optic atrophy, and pigment epithelia detachment. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood.

The 5 individuals that sustained their vision conditions as adults have had them for a range of 4 to 34 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 11 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 2 to 40 years. In the past three years, no drivers were involved in crashes and no drivers were convicted of moving violations in CMVs.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 12, 2016 notice (81 FR 21647).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 11 applicants, no drivers were involved in crashes and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 11 applicants listed in the notice of April 12, 2016 (81 FR 21647.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 11 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received one comments in this proceeding. Susan Vaulet stated that she is in favor of granting the exemptions.

IV. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Jose R. Arroyo (CA)
Ronald H. Carey (PA)
Valentin S. Chernyy (NE)
Danny R. Floyd (OH)
Claudia E. Gerez-Bentacourt (TX)
Andy R. Junod (TX)
Roger W. Kerns III (IA)
Gary C. Maxwell (OH)
Scott A. Palmer (NY)
Richard G. Roberts (GA)
Michael R. Tipton (IL)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23362 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2016–0037]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 47 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on May 31, 2016. The exemptions expire on May 31, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 28, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 47 individuals and requested comments from the public (81 FR 25486). The public comment period closed on May 31, 2016, and two comments were received.

FMCSA has evaluated the eligibility of the 47 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 47 applicants have had ITDM over a range of 1 to 39 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 28, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Moses Nater stated that he believes the exemptions should be granted to the drivers as, throughout his career, he has seen drivers with ITDM who have taken care of their conditions and safely operated CMVs. James Randall is not certain the exemptions should be granted based on his experience with crane operators who suffered from ITDM. He also believes the Federal government is requiring employers to assume the risk of hiring employees with ITDM and that it puts employers at odds with the ADA. The basis for granting the exemptions is discussed thoroughly in sections III and V of this document.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 47 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Richard B. Aungier (MT)
Christopher R. Barwick (NC)
Richard D. Bentley (IN)
Jeffrey C. Bergen (MA)
Stephen G. Bowen (IL)
Christopher J. Burgess (ID)
Edward D. Burman (MA)
Lynn J. Clark (UT)
Jamie A. Davidson (MN)
Kenneth W. Day (TN)
Horace Dickinson (GA)
Roy A. Duering (MN)
Howard J. Easter III (VA)
James R. Fifield (MI)
Scott A. Figert (OH)
Christopher E. Francklyn (CO)
Larry D. Funk (KS)
Mitchell P. Gibson (MI)
Steven S. Gray (CT)
Donald F. Greel, Jr. (MA)
Rosemary M. Holland (TX)
John A. Jung (OH)
Jerry H. Kahn (MN)
James J. Kramer (PA)
Sean T. Lewis (NJ)
Edwin Lozada (FL)
Kevin S. Martin (MN)
Allysa B. Meirowith (NY)
Darren D. Mish (WI)
Brian L. Murray (WA)
Thomas V. Noyes (MA)
Benny M. Perez (PA)
Gregory S. Pethtel (OH)
Thomas J. Price (WY)
Theodore D. Reagle (PA)
Eric A. Richie (AZ)
Joseph Romano (NY)
Keith E. Shumake (CO)
William G. Simpson (CO)
Jospeh A. Sisk (MS)
Elmer L. Sprouse (NV)
Stirling H. C. Sowerby (PA)
John J. Steele (AL)
Ryan M. Stumbaugh (PA)
David J. Walker (IA)
Shawn D. Weigel (KS)
William H. Yocum (MO)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 19, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23356 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0244]

Hours of Service of Drivers: Transco, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Transco, Inc. (Transco) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. Transco requests that its drivers be permitted to comply with the 30-minute rest break requirement while performing on-duty, not-driving tasks. The requested exemption would apply to all Transco drivers in its grocery and foodservice divisions who provide driving and delivery services to their customers. Due to the nature of their operation, Transco believes that compliance with the 30-minute rest break rule negatively impacts the overall safety and general health of its CMV drivers, and therefore requests this exemption for all of its company drivers. FMCSA requests public comment on Transco's application for exemption.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2016–0244 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0244), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, "FMCSA–2016–0244" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS rules, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break if they want to drive.

Transco seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Transco operates through McLane Company, Inc., its commonly-owned affiliate, which delivers food products and other goods to various grocery stores and restaurants throughout the United States. McLane's Grocery and Foodservice divisions maintain distribution centers throughout the country, each employing between 100 and 300 drivers. McLane's drivers provide just-in-time food delivery services to its customers, which include convenience stores, mass merchants, and various dining establishments. Transco contends that its drivers/operations differ greatly from the average long-haul CMV driver for the following reasons:

- *Multi-stop daily deliveries:* Its drivers typically make daily multi-stop deliveries to Transco's customers, returning to their originating distribution center at the end of each load, which takes an average of 19 hours. On average, each Transco driver makes nine stops per day;
- *Significant physical activity:* Each delivery requires the driver to get in and out of the CMV on multiple occasions to unload grocery, fresh food, and other products for delivery. Specifically, deliveries to smaller customers, which comprise the majority of each driver's deliveries, include parking the CMV close the customer's store, lowering a ramp from the rear of the CMV to the ground, and off-loading freight using a two-wheeled cart into the store. For larger customers, the driver delivers the freight at the customer's loading dock; and
- *Breaks in the driving routine:* Each delivery effectively breaks up the otherwise uninterrupted driving routine. The physical activities that Transco drivers engage in on a daily basis differs significantly from those of long-haul truck drivers who often do not engage in vigorous physical activity.

According to Transco, as a result of these operational differences, the 30-minute rest break requirement does not increase safety when applied to its drivers; instead, the applicant claims the requirement may very well decrease road safety for its drivers. For the typical long-haul CMV driver, the 30-minute rest break serves as an opportunity to break the monotony of driving and relieve some of the stress of continuous driving, but for Transco's drivers, by the nature of the work they currently have breaks—which includes physical exercise—several times each day.

Additionally, Transco states that the 30-minute rest break requirement causes its drivers to travel over 8.2 million additional miles each year on more than 18,000 additional loads. This increase in miles traveled results in eight additional reportable accidents per year, and also requires Transco CMVs to use over 1.3 million more gallons of fuel each year. This influx of CMVs on public highways also increases congestion, and wear on critical infrastructure. The 30-minute rest-break requirement also degrades the health of Transco's drivers as leading clinical studies reveal sedentary activities substantially increase the risk of cardiovascular disease among adults. By insisting that the rest-break requirement be performed off-duty, it essentially forces Transco's drivers to stop physical activity and become sedentary.

Transco believes that the granting of this exemption would offer two benefits—(1) the exemption would reduce the number of motor vehicle accidents and congestion on public roads by reducing the overall miles travelled to serve its customers; and (2) the exemption would increase the health of their drivers by increasing their physical activity through the course of their deliveries and substantially reducing any sedentary periods. Transco contends that under the exemption, its operations would maintain a level of safety equivalent to, if not greater than, that achieved by complying with the regulation. In its application, Transco lists a number of on-going company safety activities already in place to provide continuous training to drivers about both safety policy violations and driving behaviors that increase risk. These activities include on-board visual monitoring systems, Automatic On-Board Recording Devices, driver training, weekly safety inspections, full compliance assessments, and periodic safety committee meetings, which Transco contends would ensure an equivalent level of safety if the requested exemption is granted.

A copy of the Transco's application for exemption is available for review in the docket for this notice.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23364 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0086]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petitions.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

ADDRESSES: For further information contact Mr. George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions.

Comments: No substantive comments were received in response to the petitions identified in Appendix A.

NHTSA Decision: Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or has safety features that comply with, or are capable of being altered to comply with, all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles: The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible For Importation

1. Docket No. NHTSA–2014–0058

Nonconforming Vehicles: 2008 Aston Martin Vantage V8 passenger vehicles.
Substantially Similar U.S. Certified Vehicles: 2008 Aston Martin Vantage V8 passenger vehicles.
Notice of Petition Published at: 81 FR 26867 (May 4, 2016)
Vehicle Eligibility Number: VSP–582 (effective date July 1, 2016)

2. Docket No. NHTSA–2015–0082

Nonconforming Vehicles: 2009 Mercedes-Benz G Class Long Wheelbase (LWB) (463 Chassis) multipurpose passenger vehicles.
Substantially Similar U.S. Certified Vehicles: 2009 Mercedes-Benz G Class Long Wheelbase (LWB) (463 Chassis) multipurpose passenger vehicles.
Notice of Petition Published at: 81 FR 26869 (May 4, 2016)
Vehicle Eligibility Number: VSP–583 (effective date July 1, 2016)

3. Docket No. NHTSA–2015–0084

Nonconforming Vehicles: 2012 Jeep Wrangler multipurpose passenger vehicles manufactured for the Mexican market.
Substantially Similar U.S. Certified Vehicles: 2012 Jeep Wrangler multipurpose passenger vehicles.
Notice of Petition Published at: 81 FR 29616 (May 12, 2016)
Vehicle Eligibility Number: VSP–584 (effective date July 1, 2016)

4. Docket No. NHTSA–2016–0060

Nonconforming Vehicles: 2011 Ducati Multistrada motorcycles.
Substantially Similar U.S. Certified Vehicles: 2011 Ducati Multistrada motorcycles.
Notice of Petition Published at: 81 FR 46998 (July 19, 2016)
Vehicle Eligibility Number: VSP–585 (effective date August 26, 2016)

5. Docket No. NHTSA–2016–0005

Nonconforming Vehicles: 1994–1995 Lamborghini Diablo SE30 passenger cars.
Substantially Similar U.S. Certified Vehicles: 1994–1995 Lamborghini Diablo SE30 passenger cars.
Notice of Petition Published at: 81 FR 47490 (July 21, 2016)
Vehicle Eligibility Number: VSP–586 (effective date September 1, 2016)

6. Docket No. NHTSA–2016–0055

Nonconforming Vehicles: 2008–2011 Ferrari 599 passenger cars.
Substantially Similar U.S. Certified Vehicles: 2008–2011 Ferrari 599 passenger cars.
Notice of Petition Published at: 81 FR 47491 (July 21, 2016)

Vehicle Eligibility Number: VSP–587 (effective date September 1, 2016)

7. Docket No. NHTSA–2016–0059

Nonconforming Vehicles: 2014 Bentley Flying Spur 4-door (Saloon) and 2-door (Continental) passenger cars.
Substantially Similar U.S. Certified Vehicles: 2014 Bentley Flying Spur 4-door (Saloon) and 2-door (Continental) passenger cars.
Notice of Petition Published at: 81 FR 50788 (August 2, 2016)
Vehicle Eligibility Number: VSP–588 (effective date September 15, 2016)

[FR Doc. 2016–23320 Filed 9–27–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning an existing revenue procedure, RP 2009–37, Internal Revenue Code Section 108(i) Election, and Treasury Decision 9498.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Internal Revenue Code Section 108(i) Election.

OMB Number: 1545–2147.

Regulation Project Number: TD 9498; Revenue Procedure 2009–37.

Abstract: The law allows taxpayers to defer for 5 years taxation of certain income arising in 2009 or 2010. Taxpayers then must include the deferred amount in income ratably over 5 years. The election statement advises that a taxpayer makes the election and the election and information statements provide information necessary to track the income. Respondents are C corporations and other persons in a business that reacquire debt instruments.

Current Actions: There is no change to this Treasury Decision or revenue procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23420 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment Agreement (TRAC) for Use in Industries Other Than the Food and Beverage Industry and the Cosmetology and Barber Industry.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tip Reporting Alternative Commitment Agreement (TRAC) For Use in Industries Other than the Food and Beverage Industry and The Cosmetology and Barber Industry.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment Agreement (TRAC) for Use in Industries Other Than the Food and Beverage Industry and The Cosmetology and Barber Industry.

OMB Number: 1545–1714.

Abstract: Announcement 2000–19, 2000–19 I.R.B. 973, and Announcement 2001–1, #2001–2 I.R.B. p. 277 contain information required by the Internal Revenue Service, in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeeping: 300.

Estimated Average Time per Respondent/Recordkeeper: 16 hr., 16 min.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 4,877.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23428 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8865

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

OMB Number: 1545–1668.

Form Number: 8865.

Abstract: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded Code section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded Code section 6038 to require certain U.S. partners of controlled foreign partnerships to report information about the partnerships, and (3) modified the reporting required under Code section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 is used by U.S. persons to fulfill their reporting obligations under Code sections 6038B, 6038, and 6046A.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 31,450.

Estimated Time per Respondent: 74 hours, 45 minutes.

Estimated Total Annual Burden Hours: 245,074.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23415 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning TD 8251, Credit for Increasing Research Activity.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: T.D. 8251.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with the purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 63.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23393 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1128

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1128, Application to Adopt, Change, or Retain a Tax Year.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 317–5746, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Adopt, Change, or Retain a Tax Year.

OMB Number: 1545–0134.

Form Number: 1128.

Abstract: Section 442 of the Internal Revenue Code requires that a change in a taxpayer's annual accounting period be approved by the Secretary. Under regulation section 1.442–1(b), a taxpayer must file Form 1128 to secure prior approval unless the taxpayer can automatically make the change. The IRS uses the information on the form to determine whether the application should be approved.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals, Not-for-profit institutions, and Farms.

Estimated Number of Respondents: 9,788.

Estimated Time per Respondent: 23 hours, 43 minutes.

Estimated Total Annual Burden Hours: 232,066.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23407 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–25, Automatic Data Processing.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Automatic Data Processing.

OMB Number: 1545–1595.

Revenue Procedure Number: Revenue Procedure 98–25.

Abstract: Revenue Procedure 98–25 provides taxpayers with comprehensive guidance on requirements for keeping and providing IRS access to electronic tax records. The revenue procedure requires taxpayers to retain electronic, or ‘‘machine-sensible’’ records, ‘‘so long as their contents may become material to the administration of the internal revenue laws.’’ Such materiality would continue, according to IRS, at least until the period of limitations, including extensions, expires for each tax year.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 120,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23421 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 8578, Election Out of Subchapter K for Producers of Natural Gas.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Out of Subchapter K for Producers of Natural Gas.

OMB Number: 1545–1338.

Regulation Project Number: T.D. 8578.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under regulation section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements must file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two permissible accounting methods described in the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23398 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–20, Voluntary Compliance on Alien Withholding Program ("VCAP").

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voluntary Compliance on Alien Withholding Program ("VCAP").

OMB Number: 1545–1735.

Revenue Procedure Number: Revenue Procedure 2001–20.

Abstract: This revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report, withhold and pay taxes due on compensation paid to foreign students and scholars (nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 495.

Estimated Time per Respondent: 700 hours.

Estimated Total Annual Burden Hours: 346,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23395 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 317–5746, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue

NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions.

OMB Number: 1545–2079.

Form Number: TD 9334.

Abstract: This document contains final regulations that provide guidance under section 4965 of the Internal Revenue Code (''Code''), relating to excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties, and sections 6033(a)(2) and 6011(g) of the Code, relating to certain disclosure obligations with respect to such transactions.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 6,500.

Estimated Time per Respondent: 15 hours 9 minutes.

Estimated Total Annual Burden Hours: 98,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23404 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection Tools Relating to the Offshore Voluntary Disclosure Program (OVDP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Offshore Voluntary Disclosure Program (OVDP).

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Offshore Voluntary Disclosure Program (OVDP).

OMB Number: 1545–2241.

Form Number(s): 14452, 14453, 14454, 14457, 14467, 14653, 14654, and 14708.

Abstract: The IRS is offering people with undisclosed income from offshore accounts an opportunity to get current with their tax returns. Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. The objective is to bring taxpayers that have used undisclosed foreign accounts and undisclosed foreign entities to avoid or evade tax into compliance with United States tax laws.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 474,000.

Estimated Time per Respondent: 1 hour 40 mins.

Estimated Total Annual Burden Hours: 757,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23403 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and Related Attachments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by business entity taxpayers: Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL; and all attachments to these forms (see the Appendix to this notice). With this notice, the IRS is also announcing significant changes to (1) the manner in which tax forms used by business taxpayers will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on all business taxpayers.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Change in PRA Approval of Forms Used by Business Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for business forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading "New Burden Model," the IRS's new Business Taxpayer Burden Model (BTBM) estimates of taxpayer burden are based on taxpayer characteristics and activities, taking into account, among other things, the forms and schedules generally used by those groups of business taxpayers and the recordkeeping and other activities needed to complete those forms. The BTBM represents the second phase of a long-term effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the federal tax system. While the new methodology provides a more accurate and comprehensive description of business taxpayer burden, it will not provide burden estimates on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form basis was an appropriate methodology. Today, over 90 percent of all business entity tax returns are prepared using software or with preparer assistance. In this environment, in which many taxpayers' activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate measurement of taxpayer burden. The new model, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 206 forms used by business taxpayers. These include Forms *1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL,* and their schedules and all the forms business entity taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates.

The BTBM estimates the aggregate burden imposed on business taxpayers, based upon their tax-related characteristics and activities. IRS therefore will seek OMB approval of all 206 business-related tax forms as a single "collection of information." The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545–0123, which is currently assigned to Form 1120 and its schedules. OMB Control Number 1545–0123 will be displayed on all business tax forms and other information collections. As a result of this change, burden estimates for business taxpayers will now be displayed differently in PRA Notices on tax forms and other information collections, and in **Federal Register** notices. This new way of displaying burden is presented below under the heading "Proposed PRA Submission to OMB." Because 44 of the 206 forms used by business taxpayers are also used by tax-exempt organizations, trusts and estates and other kinds of taxpayers, there will be a transition period during which IRS will report different burden estimates for individual taxpayers (OMB Control Number 1545–0074), business taxpayers (OMB Control Number 1545–0123), and another OMB Control Number for other taxpayers using the same forms. For those forms covered under OMB Control Numbers 1545–0074 and/or 1545–0123 and also used by other taxpayers, IRS will display the OMB Control Number related to the other filers on the form and provide the burden estimate for those taxpayers in the form instructions. The form instructions will refer readers to the burden estimates for individual and/or business taxpayers, as applicable. The burden estimates for business taxpayers will be reported and accounted for as described in this notice. The burden estimates for individual taxpayers will continue to be reported and accounted for under OMB Control Number 1545–0074 using a method similar to the method described in this notice. The burden estimates for other users of these forms will be determined under prior methodology based on form length and complexity.

New Burden Model

Data from the new BTBM revise the estimates of the levels of burden experienced by business taxpayers when complying with the federal tax laws. It replaces the earlier burden measurement developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the burden estimates. The new model provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new BTBM also represents a substantial step forward in the IRS's ability to assess likely impacts of administrative and legislative changes on business taxpayers.

The BTBM's approach to measuring burden focuses on the characteristics and activities of business taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the type of entity, total assets, total receipts, and activities reported on the tax return (income, deductions, credits, etc). In contrast, the previous estimates primarily focused on the length and complexity of each tax form. The changes between the old and new burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of burden levels that reflects the better measurement of the new model. The differences in estimates between the models do not reflect any change in the actual burden experienced by taxpayers. Comparisons should not be made between these and the earlier published estimates, because the models measure burden in different ways.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the federal tax system. As has been done for individual taxpayer burden since 2005, both the time expended and the out-of-pocket costs for business taxpayers are estimated. The burden estimation methodology relies on surveys that measure time and out-of-pocket costs that taxpayers spend on pre-filing and filing activities. The methodology establishes econometric relationships between tax return characteristics and reported compliance costs. The methodology controls for the substitution of time and money by monetizing time and reporting total compliance costs in dollars. This methodology better reflects taxpayer compliance burden, because in a world of electronic tax preparation, time and out-of-pocket costs are governed by the information required rather than the form on which it is ultimately reported. Importantly, even where various businesses complete the same tax form lines, the new methodology differentiates the cost incurred to complete those forms based on characteristics of those businesses. Key business characteristics that serve as coefficients in the BTBM are:

- Entity type.
- Total assets.
- Total receipts.
- Return complexity.

The new model uses the following classifications of business taxpayers:

- Partnerships (Forms 1065, 1065–B, 1066).
- Taxable corporations (Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL).
- Pass-through corporations (Forms 1120–REIT, 1120–RIC, 1120–S).

Each classification is further refined to separate large and small businesses, where a large business is generally defined as one having end of year assets totaling more than $10 million.

Taxpayer Burden Estimates

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers. The data shown are the best estimates for 2013 business entity income tax returns available as of February 2016. The estimates are subject to change as new forms and data become available.

Proposed PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to the forms and the method of burden computation.

Type of Review: Extension of currently approved collections.

Affected Public: Businesses.

Estimated Number of Respondents: 10,900,000.

Total Estimated Time: 2.997 billion hours.

Estimated Time per Respondent: 275 hours.

Total Estimated Out-of-Pocket Costs: $52.56 billion.

Estimated Out-of-Pocket Cost per Respondent: $4,822.

Note: Amounts below are for FY2015. Reported time and cost burdens are national averages and do not necessarily reflect a "typical" case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

TABLE 1

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Partnerships	3.9	290	5,700
Small	3.7	270	4,400

TABLE 1—Continued

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
Large *	0.2	610	29,000

Forms 1065, 1065–B, 1066 and all attachments.

TABLE 2

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Taxable Corporations	2.1	315	6,300
Small	2.0	280	4,000
Large *	0.1	1,250	68,900

Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments.

TABLE 3

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Pass-Through Corporations	4.9	245	3,500
Small	4.8	240	3,100
Large **	0.1	610	30,800

Forms 1120–REIT, 1120–RIC, 1120–S and all attachments.
* A large business is defined as one having end of year assets greater than $10 million.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–23424 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2001–1, Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 20.

Estimated Average Time per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23418 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–TO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–TO, Terminal Operator Report.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Terminal Operator Report.

OMB Number: 1545–1734.

Form Number: 720–TO.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effect has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 504,000.

Estimated Time per Respondent: 4 hrs, 40 minutes.

Estimated Total Annual Burden Hours: 2,347,020.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23402 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certification for No Information Reporting on the Sale of a Principal Residence.

OMB Number: 1545–1592.

Revenue Procedure Number: Revenue Procedure 98–20.

Abstract: This revenue procedure sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,300,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours for Respondents: 383,000.

Estimated Number of Recordkeepers: 90,000.

Estimated Time per Recordkeeeper: 25 minutes.

Estimated Total Annual Burden Hours for Recordkeepers: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23394 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Effectively Connected Income and the Branch Profits Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the branch tax; the branch profits Tax; and the regulations on effectively connected income and the branch profits tax.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at (202) 317–5746, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax.

OMB Number: 1545–1070. Regulation Project Number: TD 8223, TD 8432, and TD 8657.

Abstract: These regulations provide guidance on how to comply with Internal Revenue Code section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation, to tax.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 59,100.

Estimated Time per Respondent: 12.887 minutes.

Estimated Total Annual Burden Hours: 12,694.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23396 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5471 (and Related Schedules)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5471 (and related schedules), Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

OMB Number: 1545–0704.

Form Number: 5471 (and related schedules).

Abstract: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of Internal Revenue Code sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals or households.

Estimated Number of Respondents: 28,380.

Estimated Time per Respondent: 150 hours, 48 minutes.

Estimated Total Annual Burden Hours: 4,280,244.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23409 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–61

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 89–61, Imported Substances; Rules for Filing a Petition.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this notice should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Imported Substances; Rules for Filing a Petition.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Abstract: Section 4671 of the Internal Revenue Code imposes a tax on the sale or use of certain imported taxable substances by the importer. Code section 4672 provides an initial list of taxable substances and provides that importers and exporters may petition the Secretary of the Treasury to modify the list. Notice 89–61 sets forth the procedures to be followed in petitioning the Secretary.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23405 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–T, Tuition Payment Statement.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tuition Payments Statement.

OMB Number: 1545–1574.

Form Number: Form 1098–T.

Abstract: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Responses: 21,078,651.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 4,848,090.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23413 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506–T Request for Transcript of Tax Return.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita VanDyke, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Transcript of Tax Return.

OMB Number: 1545–1872.

Form Number: Form 4506–T.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related products. Form 4506–T is used to request all products except copies of returns. The information provided will be used to search the taxpayers account and provide the requested information and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 720,000.

Estimated Time per Respondent: 1 hr., 2 min.

Estimated Total Annual Burden Hours: 555,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23412 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Treatment of Acquisition of Certain Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

DATES: Written comments should be received on or before November 28, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 317–5746, or Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300. Regulation Project Number: TD 8641.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–23399 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 28, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite

8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0117.

Type of Review: Revision of a currently approved collection.

Title: Form 1099–OID, Original Issue Discount.

Form: Form 1099–OID.

Abstract: This form is filed if the original issue discount (OID) includible in gross income is at least $10; or for any person for whom the taxpayer withheld and paid any foreign tax on OID; or from whom the taxpayer withheld (and did not refund) any federal income tax under the backup withholding rules even if the amount of the OID is less than $10.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 452,520.

Dated: September 23, 2016.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–23429 Filed 9–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 23, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 28, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Control Number: 1505–0255.

Type of Review: Extension of a currently approved collection.

Title: Hizballah Financial Sanctions Regulations.

Abstract: The Department of the Treasury's Office of Foreign Assets Control (OFAC) added the Hizballah Financial Sanctions Regulations to 31 CFR chapter V, in order to implement the Hizballah International Financing Prevention Act of 2015, Public Law 114–102 (HIFPA). The Regulations require a U.S. financial institution that maintained a correspondent account or a payable-through account for a foreign financial institution for which the maintaining of such an account has been prohibited to file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. The report must include complete information on all transactions processed or executed in winding down and closing the account. This collection of information is required by OFAC to monitor compliance with regulatory requirements regarding the closure of correspondent accounts and payable-through accounts maintained by a U.S. financial institution for a foreign financial institution when the maintaining of such accounts for a foreign financial institution has been prohibited pursuant to the Regulations.

Affected Public: Businesses or other for-profits: U.S. financial institutions operating correspondent or payable-through accounts for foreign financial institutions.

Estimated Total Annual Burden Hours: 2.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–23436 Filed 9–27–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the New York State Teamsters Conference Pension and Retirement Fund (NYS Teamsters Pension Fund), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014. The purpose of this notice is to announce that the application submitted by the Board of Trustees of the NYS Teamsters Pension Fund has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the NYS Teamsters Pension Fund.

DATES: Comments must be received by November 14, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the NYS Teamsters Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On August 31, 2016, the Board of Trustees of the NYS Teamsters Pension Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at *https://auth.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with the PBGC and the Department of Labor, to solicit public comments on all aspects of the NYS Teamsters Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the NYS Teamsters Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: September 22, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–23350 Filed 9–27–16; 8:45 am]

BILLING CODE 4810–25–P

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1985

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Part II

Department of Housing and Urban Development

Affirmatively Furthering Fair Housing: Assessment Tool for States and Insular Area—Information Collection: Solicitation of Comment First 30-Day Notice Under Paperwork Reduction Act of 1995; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–08–B]

Affirmatively Furthering Fair Housing: Assessment Tool for States and Insular Area—Information Collection: Solicitation of Comment First 30-Day Notice Under Paperwork Reduction Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the State and Insular Area Assessment Tool. This Assessment Tool will be used by States, including for joint or regional collaborations where the State is the lead entity and they are joined by local governments and PHAs. The Assessment Tool issued for public comment under this Notice includes a streamlined analysis for "small program participants," which are either QPHAs or local governments that received a CDBG grant of $500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH or a HOME consortium whose members collectively received less than $500,000 in CDBG funds or received no CDBG funding in the most recent fiscal year prior to the due date for the joint or regional AFH.

In addition, this Assessment Tool will be used by other local governments and public housing agencies when these entities collaborate with a State agency that is acting as the lead entity for a joint assessment of fair housing. HUD recognizes that questions within this Assessment Tool have been written primarily for States with inserts for QPHAs and small program participants. After this 30-day public comment period HUD commits to update the Assessment Tool to facilitate collaborations with local governments and PHAs which are not QPHAs or other small program participants.

On March 11, 2016, HUD solicited public comment for a period of 60 days on the State and Insular Area Assessment Tool. The 60-day notice commenced the notice and comment process required by the PRA in order to obtain approval from the Office of Management and Budget (OMB) for the information proposed to be collected by the State and Insular Area Assessment Tool. In this Notice, HUD is also announcing an extended two-stage process for soliciting public feedback on this Assessment Tool. This process is being implemented in response to the substantial public comments received during the 60-day comment period for this Assessment Tool. HUD is committed to providing the public with this opportunity. This 30-Day Notice is intended to solicit comment relating to the Assessment Tool, the instructions that accompany the Assessment Tool, and the descriptions of the contributing factors contained in the Appendix. The second stage is intended to elicit feedback on the beta Data and Mapping tool for States, allow for feedback on the interaction of the Assessment Tool and the supporting Data and Mapping Tool, and make any feasible improvements to the final Data and Mapping tool for States, as well as make any necessary conforming changes to the Assessment Tool. This process is described in more detail in the Notice below.

To facilitate public input on the State and Insular Area Assessment Tool, HUD will post the revised Assessment Tool as well as a compare of this revised Assessment Tool to the proposed Assessment Tool from the 60-day public comment period at *www.hudexchange.info/programs/affh.*

DATES: *Comment Due Date:* October 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sunaree Marshall, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5246, Washington, DC 20410; telephone number 866–234–2689 (toll-free). Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The 60-Day Notice for the State and Insular Area Assessment Tool

On March 11, 2016, at 81 FR 12921, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for approval of the State and Insular Area Assessment Tool. The State and Insular Area Assessment Tool was modeled on the Local Government Assessment Tool, approved by OMB on December 31, 2015, but with modifications to address the differing authority that States and Insular Areas have, and how fair housing planning may be undertaken by States and Insular Areas in a meaningful manner. As with the Local Government Assessment Tool, the State and Insular Area Assessment Tool allows for collaboration among program participants.

The 60-day public comment period ended on May 10, 2016, and HUD received 50 public comments. Section II explains the two-stage process for public comment and feedback for this Assessment Tool. Section III highlights changes made to the State and Insular Area Assessment Tool in response to public comment received on the 60-day notice, and further consideration of issues by HUD. Section IV responds to the significant issues raised by public commenters during the 60-day comment period. Section VI provides HUD's estimation of the burden hours associated with the State and Insular Area Assessment Tool, and further solicits issues for public comment, those required to be solicited by the PRA, and additional issues which HUD specifically solicits public comment.

II. Two-Stage Process for Public Comment and Feedback for the Assessment Tool for States and Insular Areas

Based on the need for the public to have an opportunity to comment on the AFFH Data and Mapping Tool (AFFH–T) for States and Insular Areas, HUD is adding a second 30-day comment period.

This extended process will include two stages with notices for public review and comment. This Notice is the first 30-day comment period, and relates to the Assessment Tool itself, as well as the instructions that accompany the Assessment Tool, and the descriptions of contributing factors in the Appendix. Once this comment period has closed, HUD will consider the comments received and make any needed changes. Please note, however, that States and Insular Areas will not be required to begin undertaking an AFH until after the second 30-day comment period has closed, and HUD subsequently publishes a final Notice announcing the availability of this Assessment Tool for use. The purpose of this extended comment process is to allow the public advanced review of the requirements in the Assessment Tool as HUD continues to finalize the AFFH–T. As part of the first stage of this extended PRA process, HUD will also conduct usability testing regarding the Assessment Tool. This usability testing includes HUD soliciting feedback to improve the Assessment Tool and the potential data and user interface IT components.

Following this first stage of the extended PRA process, HUD will provide an updated version of the Assessment Tool. States and Insular Areas will not be required to use the Assessment Tool to complete an AFH until such time HUD publishes a final Notice announcing the availability of the final Assessment Tool and final AFFH–T for States and Insular Areas. This final Notice will not be published until after the second stage of this extended PRA process has been completed. By providing the updated version of the Assessment Tool prior to issuance of the final Notice, HUD is providing an opportunity for the public and program participants to have advanced review of the proposed requirements.

The second stage of this extended PRA process will include a second Notice to solicit public comment and will be accompanied by an updated version of the AFFH–T with components designed specifically for use by States. In addition to the Notice soliciting comment, this second stage will also include additional usability testing intended to elicit feedback on the interaction between the Assessment Tool and the AFFH–T, to inform any necessary changes to the Assessment Tool itself.

This extended PRA process will allow for HUD to issue policy of relevant AFFH documents at several stages as well as result in a more accurate estimate of burden for States based on interactive feedback and more realistic conditions for evaluating the information collection instruments being proposed while maintaining a meaningful fair housing analysis. This extended process is also intended to help HUD fulfill the commitment it announced in the Preamble to the AFFH Final Rule, "that HUD will provide versions of the Assessment Tools . . . that are tailored to the roles and responsibilities of the various program participants covered by this rule. HUD [agrees] that a one size Assessment Tool does not fit all and that Assessment Tools tailored to the roles and responsibilities of the various program participants, whether they are entitlement jurisdictions, States, or public housing agencies (PHAs), will eliminate examination of areas that are outside of a program participant's area of responsibility." 80 FR 42349 (July 16, 2015).

III. Changes Made to the State and Insular Area Assessment Tool

The following highlights changes made to the State and Insular Area Assessment Tool in response to public comment and further consideration of issues by HUD.

Inserts. In addition to the insert HUD proposed in its first solicitation of public comment for Qualified Public Housing Agencies, HUD has created a streamlined set of questions (an "insert") that may be used by local government consolidated plan program participants that receive relatively small CDBG grants and collaborate with a State, where the State is the lead entity, using this Assessment Tool. HUD is proposing that local governments that received a CDBG grant of $500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH may use the insert as part of a collaboration. HOME consortia whose members collectively received less than $500,000 in CDBG funds or received no CDBG funding, in the most recent fiscal year prior to the due date for the joint or regional AFH would also be permitted to use the insert. HUD welcomes input with regard to the utility of the proposed QPHA insert and the proposed insert for local governments that receive smaller amounts of CDBG funds for conducting the jurisdictional and regional analysis of fair housing issues and contributing factors as well as the classifications of grantees that would be permitted to use the inserts as part of a collaboration. HUD will continue to assess the content of such inserts at the next opportunity for Paperwork Reduction Act approval.

Further, HUD has committed to issuing a fourth assessment tool to be used by Qualified PHAs (including joint collaborations among multiple QPHAs). HUD is also committed to continue to explore opportunities to reduce the burden of conducting AFFH analyses by consolidated planning agencies that receive relatively small amounts of HUD funding.

Segregation/Integration Section. HUD has clarified the questions in this section so that they are more applicable to States. HUD has also clarified how the State should analyze trends relating to patterns of segregation and integration in the State.

Racially or Ethnically Concentrated Areas of Poverty (R/ECAPs) Section. HUD has clarified the scope of the analysis that States must conduct when analyzing R/ECAPs. HUD has also clarified how the State should analyze trends relating to R/ECAPs in the State.

Disparities in Access to Opportunity Section. HUD has changed the questions throughout this section of the Assessment Tool to address the scope of the analysis at the State-level. HUD has also included a question in the "Additional Information" subsection of the Disparities in Access to Opportunity Section that relates to other categories of opportunity. This question is limited to information obtained through the community participation process regarding disparities in access to opportunity by protected class groups and place of residence. These other categories may include State level programs, resources, or services related to: Public safety (*e.g.*, crime, fire and emergency medical services, and services for survivors of domestic violence); public health (*e.g.*, chronic disease prevention); housing finance and other financial services (*e.g.*, State lending programs, tax incentives, and other housing finance programs); prisoner re-entry (*e.g.*, re-entry housing, employment, counseling, education, and other opportunities for offenders transitioning back into the community); emergency management and preparedness (*e.g.*, prevention, protection, mitigation, response, and recovery); and any other opportunity areas obtained through community participation.

Disproportionate Housing Needs. HUD has clarified the question in this section relating to how States should analyze trends relating to disproportionate housing needs in the State.

Publicly Supported Housing. HUD has clarified the questions in the Low Income Housing Tax Credit (LIHTC) subsection.

Disability and Access. HUD has clarified the questions in the Housing Accessibility subsection. HUD has also added a question to the Integration of Persons with Disabilities Living in Institutions or Other Segregated Settings subsection that relates to the Money Follows the Persons Program, Medicaid, and other State programs serving individuals with disabilities in integrated settings. In the Disparities in Access to Opportunity subsection of the Disability and Access Section, HUD has revised the opportunities included in the first question. Program participants are now asked to assess the extent to which persons with disabilities are able to access the following and other major barriers faced: State government services and facilities; State-funded public infrastructure; State-funded transportation; State-funded proficient schools and educational programs, including post-secondary and vocational educational opportunities; State jobs and job programs; State parks and recreational facilities; and State-funded criminal justice diversion and post-incarceration re-entry services.

Fair Housing Monitoring and Enforcement, Outreach Capacity, and Resources. HUD has revised the heading of this section of the Assessment Tool to include "Monitoring" due to the role States play with respect to fair housing. HUD has also included two additional questions in this section. The first relates to the State's monitoring and enforcement of sub-recipients to ensure compliance with the obligation to affirmatively further fair housing and other fair housing and civil rights requirements. The second relates to how the State ensures that projects comply with Federal, state, and other accessibility requirements (*e.g.*, monitoring, inspection, training, etc.), and how the State enforces these requirements.

Instructions. HUD has added clarifying language throughout the instructions to the Assessment Tool. For example, HUD has clarified that States will have flexibility should they choose to select sub-state areas to facilitate their fair housing analysis. HUD has provided additional guidance relating to how program participants might consider assessing the success of their community participation process. In the instructions that relate to the Disparities in Access to Opportunity section, HUD has provided revised instructions for the new question structure that has been adopted in that section of the Assessment Tool, as well as additional guidance on how to use the Opportunity Indices to conduct a fair housing analysis at the State-level. HUD has included additional potential sources of local data and local knowledge specifically related to the Disability and Access analysis. HUD has also provided general instructions, as well as question-by-question instructions for the two inserts—for QPHAs and Small Program Participants.

IV. Public Comments on the State and Insular Area Assessment Tool and HUD's Responses

Several commenters commended HUD on the Assessment Tool, complimenting HUD on the structure of the tool, and expressed appreciation of HUD's efforts to clarify responsibilities and expectations with respect to the Assessment of Fair Housing for States and Insular Areas. Some also asked HUD to require additional analysis in certain parts of the Assessment Tool, including additional questions. However, other commenters expressed concerns about and disagreement with components of the Assessment Tool published for purposes of the 60-day Paperwork Reduction Act comment period.

Comments on the Assessment Tool

Do not base the State Tool on the Local Government Tool. Commenters stated that HUD should reconsider the development of a de novo tool for States rather than adapting the one created for local governments because of the different scales involved. The commenters stated that most States are much larger and more geographically and demographically diverse than individual communities. The commenters also stated that the tool does not provide sufficient differentiation between entitlement and non-entitlement areas of the State. The commenters stated that the State tool should provide a structure for an appropriately scaled State-level analysis, which would offer States the flexibility to incorporate detailed, local-level analysis if necessary.

Several commenters stated that the tool appears to be developed for local jurisdictions where detailed evaluation can occur; aggregating the information up to the State level dilutes the level of detail and specific circumstances that need to be addressed to promote access to safe, decent, and affordable housing. The commenters stated that the expanded scope of the AFH compared to the Analysis of Impediments (AI) will raise the cost substantially and will be less useful because it will divert resources to collaborating with PHAs, analyzing data, and reporting to HUD. Another commenter stated that States do not have the planning or mapping departments that many local municipalities have to do the comparisons or overlaying of factors.

Other commenters stated that the tool for States and Insular Areas includes components not found in the other program participants' tool, such as a far greater extent of analysis in each section, requiring State grantees to include an assessment of past fair housing goals of other public entities goals, actions, and strategies, requiring State grantees to conduct AFHs for small PHAs, including limited English proficiency (LEP) persons in every section of the tool for only State grantees, and no option to collaborate with other program participants in a regional AFH without being the lead entity.

HUD Response: HUD understands and appreciates the commenters' concerns. The AFFH Regulation sets forth the broad framework that each of the assessment tools must follow in terms of assessing the regulatory categories of fair housing issues, identifying and prioritizing contributing factors, and setting fair housing goals. While the proposed State Tool adopts the framework of the Local Government Assessment Tool, HUD has adapted the content to try to account for the different scope, level of geography, and role of States. With regards to concerns about the scope, HUD notes that States must set priorities and goals for overcoming significant contributing factors and related fair housing issues. See 24 CFR 5.154(d)(iii). That standard applies to all program participants that must comply with the AFFH Rule. See 24 CFR 5.154(b). HUD also notes that in each Assessment Tool, program participants must use the HUD-provided data, which includes limited English proficient (LEP) persons; as such, this requirement is not limited to States.

The tool is and is not a good mechanism for affirmatively furthering fair housing. Commenters stated that the tool is costly and will produce nothing but higher areas of poverty, and HUD should instead spend taxpayer money on programs that create opportunities for low-income people to become self-sufficient. A commenter stated that HUD should identify areas of high economic growth within each State and work to increase affordable fair housing opportunities in these areas. Another commenter similarly stated that HUD should simply adopt clear definitions of areas of opportunity and areas of concentrated revitalization initiative, and require HUD funding recipients to dedicate a specified percentage of the HUD resources to addressing those two categories.

In contrast to these commenters, other commenters praised HUD's renewed focus on affirmatively furthering fair housing and expressed support for revamping the existing AI planning tool into an assessment that will provide meaningful analysis of fair housing issues and fully supports the goals of the Fair Housing Act and spirit of the Assessment of Fair Housing. Another commenter applauded HUD's efforts to draw attention to systemic housing disparity and encourages HUD to recognize the difference between State and local authority, information, and context. A commenter commended HUD for designing an AFH that incorporates fair housing more logically into the planning process, strengthens robust community participation, and provides program participants with nationally uniform data and data tools for analysis.

There were also other commenters that stated HUD should have retained the AI. A commenter stated that the AI continues to be an excellent means of affirmatively furthering fair housing. Another commenter stated that it recently completed its AI and attempted to complete the analysis outlined in HUD's rule and found it awkward for a State-wide analysis. Another commenter stated that the tool shifts a substantial amount of uncertainty to State grantees on whether they are meeting their obligation to affirmatively further fair housing in order to receive HUD funds.

HUD Response: HUD believes that the Assessment Tool will assist States' efforts to affirmatively further fair housing and is committed to improving the Assessment Tool based on feedback received and experience going forward. HUD also notes that the focus of the Assessment Tool is primarily on the protected classes under the Fair Housing Act, as opposed to poverty or income, but the tool does include certain areas of analysis and HUD-provided data relating to poverty or income.

Terminology-related comments. A commenter stated that because "area" is not a defined term it appears to be interchangeable with "region," allowing the State to conduct its analysis on a county basis, an intrastate regional basis, or a census tract basis. The commenter stated that only the census tract basis would capture R/ECAPs. A commenter stated that definitions of "region" or "local area" may differ for funding purposes based on the particular State agency or program within a State agency, which may be relevant for Sates when prioritizing fair housing goals. Another commenter asked that HUD provide clarification on the term "characteristics" versus "protected classes." A commenter stated that HUD must define disparities in access to opportunity and explain how such analysis is to be operationalized by HUD. The commenter asked what counts as a disparity. Another commenter stated that HUD must define what metrics, statistics, and other quantifiable information would be subject to a determination of statistical validity by HUD with respect to local data. A commenter stated that HUD should clarify when a "granular" analysis (as provided in the instructions for the Draft State Tool) versus a more high-level analysis is appropriate. The commenter stated that, for example, HUD may want to suggest using the required community participation and consultation processes to identify areas of the State that warrant a more "granular" analysis. Another commenter stated that HUD should use the more generic word "area" instead of "neighborhoods." A commenter stated that the following sentence appears at two points in the Draft State Tool's instructions—"Note that the percentages reflect the proportion of the total population living in R/ECAPs that has a protected characteristic, not the proportion of individuals with a particular protected characteristic living in R/ECAPs"—and that this sentence is unclear; restating this distinction and including an example would help better clarify this point.

HUD Response: HUD notes that the AFFH rule defines "Geographic Area" as "a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or another applicable area (*e.g.*, census tract, neighborhood, Zip code, block group, housing development, or portion thereof) relevant to the analysis required to complete the assessment of fair housing as specified in the Assessment Tool." 24 CFR 5.152. HUD understands that States in particular may experience differing regional fair housing issues, and for that reason HUD is providing States with certain flexibility when conducting a regional fair housing analysis. To facilitate this regional analysis, HUD uses the phrase "to the extent [a fair housing issue] extends into another state or broader geographic area . . ." in particular questions where a regional analysis is required. HUD believes that this phrase provides States with flexibility, within certain parameters, rather than a definition, with respect to their regional analysis, since States may vary in terms of the regional fair housing issues affecting their jurisdictions. HUD acknowledges that States may use the term "region" to refer to areas within their State; however, in the context of the AFFH rule, the term region refers to a geographic area that is larger than the jurisdiction (*i.e.*, the State). For this reason, to avoid confusion, HUD is using the term "sub-State area" to refer to areas within the State. The Assessment Tool provides States with flexibility, within certain parameters, rather than a definition, with respect to their areas of analysis, since States will vary with respect to the regional fair housing issues that impact their jurisdictions. States must assess their entire State, and in certain places in the Assessment Tool, "a broader geographic area" extending beyond the State. HUD believes program participants are in the best position to determine how broad that area must be with respect to their fair housing issues, based on the HUD-provided data, local data, and local knowledge, including information gained through community participation.

With respect to the "granular" analysis, HUD has added the following language to the instructions in the Assessment Tool: "A State is not expected to conduct the same analysis that local governments conduct using the Assessment Tool designed for use by Local Governments, however HUD is providing States with similar data in the AFFH Data and Mapping Tool (AFFH–T) so that more granular analysis can be conducted where appropriate. For example, during the community participation process a State may receive information that is not reflected in the HUD-provided County level maps, which may require further analysis using dot density maps. Additionally, the AFFH–T provides functionality for States to select sub-State areas to facilitate their analysis. The assessment of areas not covered by AFHs conducting by local governments is an important focus for States as they determine how their AFFH oversight responsibilities should be carried out throughout the State.'' HUD also notes that it has removed the word ''neighborhood'' from the Assessment Tool where appropriate.

HUD has previously stated how local data will be subject to a determination of statistical validity. HUD stated in the Preamble to the Final Rule this provision is intended to 'clarify that HUD may decline to accept local data that HUD has determined is not valid [and not] that HUD will apply a rigorous statistical validity test for all local data.' '' 80 FR 81848 (Dec. 31, 2015).

HUD notes that the terms protected class and protected characteristic are defined by the AFFH rule at 24 CFR 5.152. The Final Rule provides: ''Protected characteristics are race, color, religion, sex, familial status, national origin, having a disability, and having a type of disability.'' 24 CFR 5.152. The Final Rule provides: ''Protected class means a group of persons who have the same protected characteristic; *e.g.,* a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.'' 24 CFR 5.152. HUD will continue to provide clarification relating to protected class where necessary in the Assessment Tools.

HUD appreciates the commenters' request for clarification with respect to language in the instructions, specifically regarding R/ECAPs. In response to these comments, HUD has added the following language to the instructions: ''The table provides the demographics by protected class of the population living within R/ECAPs. It does not show the proportion of each protected class group that live in R/ECAPs compared to the proportion of each protected class that live in the jurisdiction outside of R/ECAPs or the jurisdiction as a whole''

Including entitlement jurisdictions in the State's assessment should not be required. A few commenters stated that the tool was not clear whether States have to include entitlement areas in their assessment. For commenters who are aware that States must include entitlement areas in their assessments, several commenters stated that since each entitlement jurisdiction will prepare its own assessment, State assessments should not be required to include these areas in the State assessment but they may choose to do so. The commenters stated that the State tool should only mandate analysis of geographical and subject matter where the State agency responsible for applying the AFFH rule has jurisdiction. The commenters stated that each State should be encouraged, but not required to pursue analysis beyond those boundaries to the extent it possesses such authority.

Commenters stated that the State tool should be restructured to eliminate the need for extensive, repetitive, and local-level analysis. The commenters stated that it is redundant and wasteful to include entitlement jurisdictions, will create confusion between State grantees and entitlement jurisdictions, and State grantees have no authority over how entitlement jurisdictions spend their funds and cannot meaningfully impact contributing factors in those areas. Commenters stated that States be able to rely on the analysis conducted by local governments and PHAs. The commenters further stated that Community Development Block Grant (CDBG) programs cannot serve entitlements, and those funds cannot be used to help address housing issues within entitlements. The commenters stated that the analysis performed by entitlement communities should be linked to the State analysis instead of requiring States to duplicate efforts and analyze the same data to create a separate plan.

Commenters also stated that inconsistencies and incompatible action steps could be developed if the State must analyze the entitlement areas. The commenters stated that because the State and Local Government tools may have inconsistent results, HUD will be placed in the position of having to determine which AFH is ''more right'' for a given area, given that conclusions may not be coordinated within the HUD review process. The commenters stated that HUD must clarify the relationship between the State assessment and the local participating jurisdiction assessments since they are not only duplicative, but could have competing results. States should have the opportunity to adopt those assessments where another participating jurisdiction has a current assessment.

Commenters stated that the proposed tool should limit States' obligation to consult with entitlement jurisdictions and PHAs and tailor the tool to State activities. The commenters stated that contrary to statements in HUD's response to commenters published with the AFFH final rule, the AFH tool does not explicitly limit the consultation obligations to non-entitlement areas and by referring to 24 CFR 91.110 without further clarification, the tool appears to require consultation with all local PHAs operating in the jurisdiction. The commenters stated that the proposed tool should only focus on and use data for non-entitlement jurisdictions, since State grantee's programmatic responsibility is for rural areas not covered by entitlement jurisdictions.

A commenter similarly stated that HUD should not require inter-State analysis as it would require the collection and analysis of information from other jurisdictions that would significantly increase the burden of compliance, and the analysis should only expand outside the jurisdiction when applicable. Another commenter stated the entire State should be covered by an assessment, however, conducting a full State analysis should be optional if seamless coverage of the State could occur through other means, and States should have the flexibility of conducting a sub-State analysis that is meaningful.

In contrast to these commenters, other commenters stated that because contributing factors are at the very core of the fair housing goals and priorities, the conclusions of entitlement jurisdictions within a State will significantly influence the State analysis, and States should not simply accept the conclusions without an independent analysis.

HUD Response: HUD understands the concerns of these commenters. HUD notes that the final Rule requires an assessment of the entire jurisdiction, or State in this case, not just non-entitlement areas, and for this reason States are expected to consider statewide policies and investments that affect fair housing issues. At the same time, HUD recognizes that the State is not expected to do the analysis that local governments conduct in their AFHs (for example, neighborhood-by-neighborhood analyses). HUD has added language to the instructions clarifying that while the entire State must be analyzed, the program participant may take into account the different fair housing issues and contributing factors affecting different parts of the State. For instance, more rural, non-entitlement parts of the State may have different fair housing issues, which the State should take into account particularly for setting priorities and goals in the AFH.

HUD also notes that States may use information contained in an AFH of a local government. States are accountable for the information contained in its AFH that is submitted to HUD. If States are utilizing information from another AFH, States should consider the following: (1) Whether the AFH has been accepted by HUD; (2) whether the AFH is a draft AFH that was published for the purposes of conducting the community participation process; and/or (3) whether the AFH meets the criteria for local data and local knowledge under 24 CFR 5.152 and the instructions to the Assessment Tool.

HUD plans to provide the States with data that cover the entire State, as well as data that are specific to the non-entitlement areas of the State, which may provide for useful comparisons when conducting a fair housing analysis. While local governments may identify different contributing factors and fair housing issues in their AFHs from States, these are separate planning documents related to different HUD grantees' fair housing planning. With respect to public housing or Housing Choice Voucher programs, the State shall consult with any housing agency administering public housing or the Housing Choice Voucher program on a Statewide basis as well as all PHAs that certify consistency with the State's consolidated plan. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the State should consult with the PHA and identify actions the State may take, if any, to assist the PHA in implementing the required remedies.

Additionally, HUD notes that fair housing issues are not confined to jurisdictional, geographic, or political boundaries; for that reason, a regional analysis broader than the State in order to provide context for the fair housing issues identified and to assist in developing regional solutions for overcoming contributing factors and related fair housing issues.

Elaborate on list of organizations consulted. A commenter stated that Question 2 of Section III should incorporate language from 24 CFR 91.110(a) and elaborate on the requirement that States provide a list of organizations consulted. The commenter stated that the question should include the following language: "Describe how the organizations consulted (including, but not limited to, State-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws, health services organizations, social service organizations, and public and private agencies providing assisted housing—including any State housing agency that administers public housing) reflect a representative selection of organizations from all parts of the State, including entitlement and non-entitlement jurisdictions and social service organizations should be defined as those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons." A commenter stated that HUD should clarify whether the State must consult with every Resident Advisory Board or just those in the limited number of jurisdictions that are non-entitlement entities.

HUD Response: HUD appreciates this commenter's suggestion, but declines to include the proposed language in the Assessment Tool. The instructions for Question 2 in Section III specifically include the requirements of 24 CFR 91.110. The requirement to consult with PHAs applies to those PHAs that receive a certificate of consistency with the consolidated plan of the State. The references in this Assessment Tool to meetings with Resident Advisory Boards is only applicable when a PHA is conducting a joint or regional AFH with the State. HUD will provide additional guidance for States and Insular Areas on the community participation process, as well as general guidance relating to the Assessment of Fair Housing, once OMB approves this Assessment Tool.

Elaborate on community participation requirements and coordination with other entities. A few commenters asked whether States are obligated to conduct community participation within entitlement jurisdictions and tribal areas. Other commenters asked HUD to clarify whether comparing the turnout for public meetings, the number of substantive comments received, and the number and quality of responses to public and stakeholder surveys is an acceptable approach to measuring the success of the community participation process. The commenters also asked HUD to provide an explanation of what "meaningful" means in the context of "meaningful community participation." A commenter stated that the community participation process is a vital part of the fair housing assessment, and that this section of the assessment tool should elicit more detailed information, including more specific details about outreach activities. The commenter further stated that outreach to persons with disabilities should include outreach targeted to those living in both institutional and community-based settings. Another commenter made a similar comment that the tool should provide meaningful guidance and robust instructions for the community participation process.

A commenter asked HUD to clarify whether "any" oversight, coordination, or assistance of other public entities' goals, actions, and strategies is optional. The commenter stated that the final rule suggests that it is not optional, but the question in the Assessment Tool seems as if it is optional. The commenter added that States do not have legal authority to oversee or control local program participants' AFH processes and many will not welcome State involvement in their planning efforts.

HUD Response: In the AFFH Rule Guidebook, available at *https://www.hudexchange.info/resource/4866/affh-rule-guidebook/*, HUD has provided guidance on conducting community participation. HUD will continue to provide technical assistance and guidance to program participants on the requirements surrounding the community participation process.

HUD understands that there are State and local constraints on which entities have authority to operate and monitor the actions of other entities. HUD encourages collaboration to the extent feasible and permitted by State and local law.

Encourage coordination between States and local jurisdictions to eliminate duplicative work and possible inconsistencies. Commenters stated that it would be an important improvement if there was encouraged coordination between the local jurisdictions and the State so that the findings are complimentary, rather than redundant. The commenters stated, for example, States could be involved in the development of the local PHA's plans so that the information is consistent and allows the State to focus on the balance of state geographies and the impacts of State policy on access to housing. The commenter stated that sharing findings from local jurisdictions in a systemic and organized way would also be helpful.

HUD Response: HUD has and will continue to encourage collaboration among various types of program participants that must conduct and submit an AFH to HUD. HUD also recognizes that its program participants need flexibility as they embark on conducting an AFH, and for that reason, HUD is not prescribing how such collaboration is to be achieved. Instead, HUD leaves this up to program participants that conduct a joint or regional AFH, as described at 24 CFR 5.156. HUD will also continue to provide technical assistance and guidance to program participants with respect to the issues raised by these commenters.

States reaching out to PHAs for certification of consistency with the State's consolidated plan is not reasonable or practicable. A commenter stated that while it is reasonable to expect a local government to consult and reach out to local PHAs that seek certification of consistency with the State's consolidated plan, it is not reasonable or practicable to expect the same of a State with a large number of local PHAs. Another commenter stated that the AFH Final Rule and tool seem to suggest that States are obligated to independently evaluate the AFH analysis and methods for addressing fair housing issues in jointly prepared PHA AFHs for which PHAs seek certification of consistency with the State plan. However, States may be hesitant to certify a PHA plan when they do not agree with its goals and priorities for addressing fair housing issues, which sets up a potential conflict between PHAs and States. This is an unfair consequence because States do not administer the HUD-funded programs that the certifications pertain to. The commenter stated that HUD should eliminate this requirement or not require States to certify consistency until after HUD has approved the PHA's AFH.

Another commenter stated that a State cannot truthfully certify that it is in compliance with its obligation to AFFH if it is not monitoring the compliance of its subrecipients. The commenter recommended that subrecipients be required to report certain information to the State demonstrating compliance. The commenter also recommended the development and implementation of a streamlined AFH process for non-entitlement communities based on the Analysis of Impediments to Fair Housing—Texas (FHAST). The commenter stated that the FHAST allows the State to monitor its subrecipients' compliance with the AFFH certification and make its own truthful certification. The commenter recommended that to make the process more effective the approach should be modified so that the assessment form is tailored to the size of the jurisdiction, that there be more robust training and technical assistance provide, and ensure that training and technical assistance focuses on the meaning of AFFH beyond housing programs.

HUD Response: HUD disagrees with the commenters' characterization of the requirements under the AFFH rule HUD notes that several of the comments appear to reference requirements that are not within the scope of the AFFH Rule or the assessment tool. States are not required to independently evaluate the analyses conducted by other program participants. Note, if the State is involved in conducting a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. See 24 CFR 5.156(a)(3). Note that collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH. See 24 CFR 5.156(a)(3).

HUD appreciates the concerns of the commenters regarding the State's role in monitoring subrecipients. In response, HUD has added two questions to the final section of the analysis section of the Assessment Tool to account for this responsibility. Examples for States to consider regarding the oversight of the AFFH requirements—such as the FHAST example—may be considered for additional guidance.

As previously stated, HUD will continue to provide training, guidance, and technical assistance to program participants with respect to implementation of and compliance with the AFFH rule.

Level of analysis required by tool is inappropriate for States. Commenters stated that the proposed tool requires far greater analysis from a State given its larger jurisdiction with respect to size and diversity of local jurisdictions within it. A commenter expressed concern that most, if not all, of the issues will not be in the State's domain to take action. The commenter recommended that it would be helpful if HUD provide a clear statement of how HUD intends to utilize the Assessment and what the expectations are for States.

A commenter stated that this is challenging for States with hundreds of cities and towns with considerable autonomy under State law, and many of the directed questions and contributing factors are of a municipal-level nature and would require a State to obtain and review municipal data and to conduct significant fact finding. A commenter stated that examples of areas for which significant fact finding would be needed include community opposition, land use and zoning, local policies and practices, lack of private and public investments, infrastructure, accessibility of government services, sidewalks, pedestrian crossings, infrastructure, access to proficient schools, educational programs, recreational facilities for persons with disabilities, education policies, and access to financial services.

Another commenter stated that the tool requires States to carry out an in-depth assessment, set priorities, and develop action timeframes based on a set of metrics that involves agencies besides housing and community development, including participation by public and private stakeholders, and numerous State agencies that are not recipients of HUD funding but are instead subject to oversight from other federal agencies.

Several commenters stated that it is not feasible or appropriate for States to drill down to a neighborhood-by-neighborhood analysis. The commenters stated that States need flexibility in tailoring the content of the assessment to ensure that analysis conducted will be meaningful and under the authority of state housing agencies. The commenters stated that States should have the flexibility to use the HUD data at appropriate scales, drilling down into local analysis of areas such as opportunity for employment, education, and transportation in locations of the State where they are most impactful. The commenters also stated that census tract analysis is not feasible for States, and data should be consolidated at a higher level (county, MSA, regional). The commenters stated that many of the opportunity questions in the State Assessment Tool should be removed because they are only appropriate at the neighborhood level. The commenters stated for a large State, local decision making and local policies are the bases for determining whether housing is "fair" since it is not reasonable to expect State residents to move long distances from their current locations to access housing opportunities.

HUD Response: As previously stated, HUD understands the limitations States may have with respect to their authority in certain areas of the State due to State or local law. The AFH is intended to assist States in engaging in meaningful fair housing planning. HUD has made several modifications to the assessment tool in order to clarify the level of detail and analysis that are required. The descriptions of numerous contributing factors have also been amended to better reflect a state-level rather than municipal level analysis.

HUD has also added language to clarify that States are not generally required to conduct a neighborhood-level analysis. This language, added in several key questions throughout the assessment tool states, "[participants] should focus on trends that affect the state or trends that affect areas of the state rather than creating an inventory of local laws, policies, or practices." They are not required to create inventories of local ordinances or policies that are having an effect at the local or neighborhood level. HUD notes, however, that local ordinances or policies may be considered local data or local knowledge. States are expected to focus on patterns or trends affecting fair housing issues in the State, including those that may be having an affect across the State's region.

In contrast to the data provided to local governments and PHAs, which HUD is providing data at the census tract level, HUD is providing States with data at the county level, and will allow States to create "sub-state areas," which may be comprised of groupings of counties. This flexibility is intended to allow States to conduct their analysis while reducing burden by raising the level of geography at which States must conduct their analysis. A State is not expected to conduct the same analysis that local governments conduct using the Assessment Tool designed for use by Local Governments; however, HUD is providing States with similar data in the AFFH–T so that more granular analyses can be conducted where appropriate.

The AFFH–T will provide users with the flexibility to shift their level of focus between the maps provided for States at the County level, with more detailed maps that provide data below the County level. For instance, dot density maps are also available in the AFFH–T. A dot density map (also known as dot distribution map) uses a color-coded dot symbols representing the presence of a specified number of individuals sharing a particular characteristic to show a spatial pattern. Thematic maps can obscure patterns of segregation within a County and a dot density map maybe useful to see more granular patterns. When viewing a dot density map, the presence of residential segregation may appear as clusters of a single color of dots representing one protected class, or as clusters of more than one color of dots representing a number of protected classes but still excluding one or more protected classes. More integrated areas will appear as a variety of colored dots.

HUD has also revised the questions in the Disparities in Access to Opportunity section of the Assessment Tool based on the commenters' concerns.

On a more general note, HUD announced the second stage of the extended public comment process, as described above.

The Assessment Tool does not take into consideration "home rule" States. Several commenters stated that the tool does not take into consideration a "home rule" State in which the state Constitution grants every city and town the right of self-governance in local matters. The commenter stated that in addition to the burden of gathering and analyzing local data, it is unclear how HUD expects them to be addressed, and within the timeframes, under the Fair Housing Goals and Priorities Section of the tool because the State lacks the legal authority to overcome locally imposed impediments to fair housing, thus an analysis of this information will not likely enhance efforts to affirmatively further fair housing at the State level. The commenters stated that each unit of local government creates its own policies and programs, which often do not align with the State. The commenters stated that for example, North Carolina has 100 counties, more than 500 incorporated municipalities, with 115 school districts and as many charter schools, and that even if actions identified through the collection of local data and the analysis can impact change relative to fair housing, it would be outside of the State agency's authority to and ability to impact.

HUD Response: HUD understands that there are State and local constraints on which entities have authority to operate and monitor the actions of other entities. HUD encourages collaboration to the extent feasible and permitted by State and local law.

HUD also notes that in order to set fair housing priorities and goals, the State must understand the local and regional context for the fair housing issues and contributing factors it identifies in its assessment.

HUD has clarified that several questions are asking state agencies to focus on trends or patterns, "that affect the state or trends that affect areas of the state rather than creating an inventory of local laws, policies, or practices." A similar instruction was added stating that, "For broader questions about policies and laws, HUD expects that States use information available to it through the community participation and consultation process and does not expect the State to collect all possible sources of data or create inventories of local laws or policies throughout the State. Program participants can reference studies or reports issued by other State agencies, and these studies or reports may be necessary and relevant for the completion of the AFH. Referencing such studies and reports may be useful in certain areas of the fair housing analysis when the program participant does not, itself, have first-hand knowledge of the topic at hand. HUD acknowledges that such reports will have been conducted for purposes other than informing an AFFH analysis and these may still provide valuable information."

Requirement for regional analysis is burdensome and meaningless. Several commenters stated that HUD continues to insist that State grantees conduct an exhaustive analysis for all regions within the geographic boundary of their State (including entitlement jurisdictions) on a broad range of factors, many outside of the State grantee's expertise, authority, and ability to impact. Commenters stated that the scope of the tool must be scaled back significantly so that State grantees can reasonably conduct a meaningful AFH on issues they can meaningfully address. Another commenter suggested that the tool acknowledges that the content of responses required by these sections is categorically not being viewed from a position of subject-matter expertise.

Several other commenters stated that the ability to access and meaningfully analyze data beyond the State's boundaries is not feasible. The commenters stated that the requirement that States conduct a regional analysis where there are "broader regional patterns or trends affecting multiple states" by analyzing local data and knowledge, and that consulting the existing AIs and AFH's of neighboring States and jurisdictions is not achievable without additional resources and time.

Other commenters suggested that including regional data should be optional for States and States should be able to determine when regional perspectives on specific topics or fair housing issues is appropriate and relevant and will enhance the AFH. The commenters stated that HUD should not require inter-State analysis as it would require the collection and analysis of information from other jurisdictions that would significantly increase the burden of compliance, and the analysis should only expand outside the jurisdiction when applicable. The commenters stated that if the purpose is just to assess issues in neighboring States without attempting to change policy, then that requirement is understandable. However, if the purpose is to change policy in another State, then this will be problematic. The commenters concluded by stating that this analysis is more appropriate at the local level or possibly at the metropolitan statistical area (MSA) level that share a local policy-making body or mechanism.

A few commenters stated that the currently proposed format of the tool that incorporates regional analysis throughout the sections is preferable to a regional section. The commenters stated that actual placement of the questions currently is not problematic; however, only Statewide and sub-State analysis should be required when data are provided.

Other commenter requested clarification on what regional analysis means. A commenter stated that its State is divided into 8 regions, and asked if HUD is requiring an analysis of each of these regions. Another commenter stated that the proposed tool is vague on whether the regions within the states would be established.

A commenter requested that HUD provide separate sub-sections to address multi-State issues, with the opportunity to reference, rather than restate the jurisdictional analysis.

HUD Response: As stated above, HUD notes a regional analysis is not only meaningful when conducting a fair housing analysis, but is required by the regulation. In particular, fair housing issues are not confined to jurisdictional, geographic, or political boundaries; for that reason, certain regional analyses may be required, as directed by the Assessment Tool, in order to provide context for the fair housing issues identified and to assist in developing regional solutions for overcoming contributing factors and related fair housing issues. HUD also notes that understanding how regional fair housing issues affecting the State are influenced by external factors may provide insight into how the State can overcome the effects of contributing factors and related fair housing issues. HUD understands that States will not necessarily be able to affect policy in another State, but it may better implement its own fair housing-related policy. In response to the public comments on the interstate regional analysis requirements of the AFH, HUD has made a number of changes. These include removing separate questions calling for such an interstate analysis. Instead several key questions were amended to state that, "to the extent that [such patterns] extend into another state or broader geographic area, identify where that occurs."

HUD also distinguishes between a "regional" analysis in this Assessment Tool, which is larger than the State and an analysis within the State that may be comprised of "sub-state areas." HUD recognizes that many jurisdictions may also use the term "region" to refer to an area within the State. HUD is seeking comment on the use of terms that would be clearest to program participants and the public when referring to these different types of geography.

Analysis of the entire State is important. Commenters stated that the instructions for and questions in the tool should require an analysis of the entire State, not just the non-entitlement areas. The commenters stated that HUD should make clear that participation by stakeholders in entitlement jurisdictions during community participation is important because they are affected by State-wide laws, polices, and practices. The commenters stated that HUD should modify questions in Section III to ensure that States will conduct the community participation process in a manner that is representative of all areas of the State, both entitlement jurisdictions as well as non-entitlement jurisdictions. The commenters stated that Question 1 of Section III should include the following language at the end of the existing question: "In these activities, explain efforts made to ensure meaningful community participation representative of all parts of the State, including entitlement and non-entitlement jurisdictions. If sub-State areas are utilized in the analysis, identify community participation efforts conducted in each sub-State area."

Other commenters stated that the tool appropriately takes into consideration that States and State housing finance agencies administer programs between CDBG, Emergency Solutions Grants (ESG), Home Investment Partnerships (HOME), and Housing Opportunities for Persons With AIDS (HOPWA), including LIHTC and State affordable housing trust programs. The commenters stated that since Fair Housing is complex and extensive, it is appropriate that a variety of State functions are taken into account and evaluated as a whole; and that such efforts should be taken into account when considering a State's progress towards affirmatively furthering fair housing.

Some commenters stated that inclusion of entitlement jurisdictions within the State's analysis is a pivotal distinction and a necessary condition for any meaningful fair housing analysis at the State level. The commenters stated that State agencies administer the largest federal affordable housing program (LIHTC) predominantly within entitlement jurisdictions; many entitlement jurisdictions only receive direct allocation of CDBG funds from HUD while other formula grant programs are administered by States or other large grantees; state-level policies and practices often establish the framework that defines the policy options that are available to local governments, including entitlement jurisdictions; and this approach is required by the language of the regulation. The commenters stated that unlike under the Analysis of Impediment requirements, States should not omit entitlement jurisdictions from their scope of analysis.

HUD Response: HUD appreciates these commenters' suggestions and observations. However, HUD declines to change the questions in Section III of the Assessment Tool, as the questions are based on the requirements of the AFFH rule, HUD program-related program regulations, and other fair housing and civil rights requirements. However, the scope of the questions in this Assessment Tool include an analysis of the entire State, including entitlement and non-entitlement areas.

HUD has made several changes to clarify the scope of analysis for States and to clarify how States may choose to consider the unique needs and issues facing rural areas of their State. For state agencies that administer programs that primarily benefit rural and non-entitlement areas of the State, the Assessment Tool provides for specific focus on the fair housing issues affecting these areas, while still considering State-wide fair housing issues.

All non-housing related questions should be optional. Commenters stated that the State's analysis should focus on areas of opportunities related to housing, which is the focus of a State's qualified allocation plans (QAPs), in which points are provided for developments based on their physical location relative to that opportunity, and the metric is assessed by its outcome and not the underlying policies in these areas that result in these outcomes. Commenters stated that non-housing related questions should be optional. Commenters stated that the new areas of emergency preparedness, prisoner re-entry, public health, and public safety should be optional because there is no HUD-provided data, and they are only tangentially related to housing and are outside of the authority of State agencies that administer HUD grant funds. Commenters stated that a State should focus on a thorough policy and program analysis of factors directly related to housing and in areas that are within the authority of the agencies administering the grant funds, instead of a full policy analysis of all tangentially related areas, which is burdensome and would necessitate the hiring of outside consultants with expertise in each area. Commenters stated that HUD's proposal to add even more questions for States that would additionally involve State public health, public safety, corrections, health care, and emergency management/preparedness makes the task of completing the AFH unwieldy; analysis of a multitude of local conditions renders the AFH impracticable for States given the time allotted and inadequacy of resources.

Commenters stated that HUD may well be interested in learning about the impact of education related to laws, policies, and practices that affect the ability of residents in different areas of the state to attend post-secondary and vocational education, shifting the significant burden of researching and analyzing information on to entities that receive HUD funding is inappropriate. The commenters questioned whether the information gathered under such a sweeping request will be of practical utility since program participants will be required to engage in research and analysis regarding a host of broad policy areas to attempt to learn and opine on the detailed requirements and policies of areas besides the creation and provision of housing, calling into question accuracy and conclusions. The commenters stated that if the ultimate goal is to help program participants develop thoughtful and coherent strategies to further fair housing, a tool that requires devoting time and resources to learning and documenting policy in other areas is not clearly targeted to the ultimate goal and may result in a less robust analysis of the data and policies directly related the provision of fair housing.

Other commenters stated that it is appropriate for States to have to describe laws, policies, and practices affecting affordable rental housing, homeownership, and mortgage access in the State; but HUD should not ask States to analyze other issues for which they do not have expertise. The commenters stated that requiring an in-depth analysis of the data and "laws, policies, and practices" regarding the wide array of topic areas that the AFH covers goes above and beyond what is necessary for the proper functions of HUD. Another commenter stated that the vastness of the request and the questionable nature of the conclusions drawn makes these types of questions in the tool an untenable exercise. A commenter similarly stated that the repeated use of the clause "demographic trends, laws, policies, or practices" as it requests information on specific subject areas is too broad. The information to be gathered is potentially unlimited and its actual causality is speculative at best.

In contrast to these comments, a commenter stated that States must be required to discuss "other indicators of environmental health based on local data and local knowledge," including the siting highways, industrial plants, waste sites, and Superfund and brownfield sites. The commenter stated that limiting any examination of environmental health hazards to air pollution would miss the continuing impact of environmental racism on communities of color in cities such as Flint, Michigan, and in the Donna colonias in the Rio Grande Valley in Texas. The commenter stated that vulnerability to the effects of a natural disaster should also be considered part of the environmental health of a neighborhood. Another commenter stated that the following should be included in the opportunity section—include an analysis of early education programs, especially quality early education programs and the relationship of access to state programs, policies, and funding, including child care subsidy policies, explicitly include state tax policies in the list of state actions to be analyzed, and include questions related to income, including minimum wage policies and access to income supports.

HUD Response: HUD appreciates the commenters' feedback on these issues. HUD notes that the question relating to the other opportunity areas (*i.e.,* the question on emergency preparedness, prisoner re-entry, public health and public safety) have now been included in the "Additional Information" section of the Disparities in Access to Opportunity section of the Assessment Tool. This question is limited to information the State obtains through the community participation process.

HUD appreciates the comments received recommending the addition of various additional types of opportunity measures that might be considered. HUD is aware that the state agencies responsible for administering HUD programs, including CDBG and HOME, have limited expertise and access to information on the numerous other types of opportunity areas that might be considered. Being mindful of adding excessive burden, HUD has chosen not to require the analysis of the other opportunity areas proposed in the 60-day Notice. HUD is also aware that some issues may be more salient in some States but not others. In recognition of these considerations, HUD instead has added a new component to the "additional information" questions in the Disparities in Access to Opportunity section. HUD notes that such other categories may be "identified through the community participation process," and "may include State level programs, resources, or services related to . . . [public safety, public health, housing finance, prisoner re-entry, emergency management, or other opportunity areas]." These additional information questions provide a space for State program participants that choose to include information relevant to their State and their assessment.

HUD has also revised the "laws, policies, and practices" questions such that they are to be informed by information obtained through the community participation process.

Under the AFFH rule, program participants must undertake an analysis that will identify significant disparities in access to opportunity for any protected class within the jurisdiction and region. See 24 CFR 5.154(d)(2). It is important to assess whether protected classes experience disparities in access to opportunity, such as education, employment, transportation, environmental health, low poverty, among others.

HUD appreciates the commenter's suggestion to have States discuss "other indicators of environmental health based on local data and local knowledge." The contributing factor "Location of environmental health hazards" is included in the State Tool within the "Disparities in Access to Opportunity" section in the version submitted during the 60-day public comment period. The definition of this contributing factor is available in the Assessment Tool's appendix.

Requirement to analyze disparities in access to opportunity and to identify significant contributing factors exceeds requirements of the Fair Housing Act. Commenters stated that many States consider the requirement to analyze disparities in access to opportunity to be overstepping the requirements of the Fair Housing Act and is not necessary to reasonably determine impediments to fair housing choice. Commenters stated that for a State to thoroughly evaluate segregation/integration, it must evaluate the context of each occurrence of segregation to determine its validity and characteristics. Other commenters stated that States must make an interpretive leap to identify contributing factors to observed patterns, but these are uniquely local variables that will exert influence in different ways in different jurisdictions and therefore states will be compelled to fracture the AFH into an "analysis of boundless sets of local circumstances in order to meaningfully isolate variables that contribute to certain fair housing issues." Other commenters stated that the tool requires States to draw conclusions as to segregation and causation, which is an analysis State agency staff are not equipped to undertake and draw conclusions from complex data correlations. The commenters stated that to make a causal analysis anything but double blind experiments or other highly sophisticated research techniques would be legally irresponsible and may result in significant legal ramifications arising from incorrect conclusions.

Other commenters stated that the tool erroneously requires that any finding of disparate impact is a fair housing issue. A commenter stated that this requirement goes far beyond the legal one articulated by the Supreme Court in Texas Department of Housing and Community Affairs Inclusive Communities Project, Inc. The commenter stated that it would be legally flawed to make general conclusions of causation without significant substantive proof and an understanding of the origin and application of policies outside the State's purview.

HUD Response: HUD notes that the affirmatively furthering fair housing mandate under the Fair Housing Act is distinct from the theories of liability under the Act, such as disparate treatment and disparate impact. In order to set meaningful fair housing goals with respect to affirmatively furthering fair housing, program participants must assess whether residents of their communities' experience disparities in access to opportunity on the basis of race, color, national origin, religion, sex, familial status, or disability. For these reasons, an analysis of disparities in access to opportunity is vital to conducting a meaningful fair housing analysis.

Requirement to undertake an AFH must come with funding. A commenter stated that it is not aware of any similarly sweeping assessment obligation from a Federal agency without a commitment of Federal resources to assist in implementation. The commenter stated that for example, the Department of Education offered $500,000 planning grants to support its Promise Neighborhoods Program, which similarly recognized the importance of breaking down agency "silos" to ensure Federal, State, and local cooperation, but also recognized the enormous scope of the work and need for commitment of substantial resources to carry it out, even within a very limited target geography.

HUD Response: HUD notes that States already had an obligation to undertake fair housing planning by completing an Analysis of Impediments to Fair Housing Choice. The Assessment of Fair Housing is largely similar to the prior existing process, but updates it with the HUD-provided data and tools and creating a standardized form for use by HUD's grantees and public housing agencies. Subject to program rules and limits, funding for program administration including fair housing planning continues to be an allowable use of HUD funding.

Information needed for the tool will be extremely difficult to collect. Several commenters stated that the tool requests an extraordinary amount of information that will be extremely difficult for States to collect and analyze in a meaningful matter and relies too much on local data. The commenters stated that some questions are nearly impossible to answer from a State-wide perspective, such as questions on education policy, which will vary from district to district, and questions on zoning and land use policies.

A commenter stated that the tool encourages broad and sweeping interpretations about policies of sister agencies without participation in the policy making process and without the availability and understanding of all relevant information. The commenter stated that this would be legally irresponsible as the responses in the tool could be used as a basis for a fair housing complaint against the State or other State agencies (*e.g.,* questions related to education, employment, and transportation). The commenter stated that the State does not have the legal authority to compel the cooperation of other agencies in the analysis or the goals. The commenter provided an example of its State transportation department, which has 5,700 employees and the state has regional, county, and local transportation agencies. The commenter stated that to be able to analyze all aspects of this topic would be unduly burdensome.

Another commenter requested that States not be required to answer questions that will necessitate the collection of new local data.

HUD Response: There are limitations on what information program participants must use when completing an AFH. The definitions of local data and local knowledge at 24 CFR 5.152 and the instructions to the Assessment Tool explain what local data and local knowledge are and when they must be used. HUD understands the limitations of coordinating with various agencies or departments on issues relating to access to opportunity; however, the Assessment Tool is designed to assist program participants in identifying where issues are present and then figure out how they might go about solving them. In addition, HUD has clarified in certain questions in the Assessment Tool when the analysis is intended to focus on any trends in demographics, law, policies, or practices that could impact fair housing issues. These questions are to be informed by the community participation process, any consultation with other relevant government agencies, and the State's own local data and local knowledge. HUD has also included the following language to clarify the focus of these questions: "Participants should focus on trends that affect that State or trends that affect areas of the State rather than creating an inventory of local laws, policies, or practices.

The evaluation of all publicly supported housing in the State is important to the State assessment. Several commenters expressed support for the evaluation of all publicly supported housing in the State as part of the assessment including LIHTC. A commenter requested that the definition of publicly supported housing include State-funded housing programs and the federal LIHTC program, consistent with the definition in the local government tool, and possibly include Rental Assistance Demonstration (RAD). The commenter stated that to provide a meaningful analysis, the locational analysis of publicly supported housing needs to be conducted at the census tract level or otherwise local level geography, not the county level.

HUD Response: HUD appreciates this comment and notes that the instructions to the Assessment Tool make clear what is considered publicly supported housing for purposes of conducting an AFH. The instructions state that the term "publicly supported housing" refers to housing assisted, subsidized, or financed with funding through Federal, State, or local agencies or programs. HUD also notes in the instructions that other publicly supported housing, aside from the categories for which HUD is providing data, relevant to the analysis includes housing funded through state and local programs, or other Federal agencies, such as the U.S. Department of Agriculture and the U.S. Department of Veterans Affairs, or other HUD funded housing not captured in the HUD-provided data.

HUD appreciates the commenters' concern about the level of the geography of the publicly supported housing analysis. HUD also recognizes the burden that conducting an analysis at the census tract level might place on States, and believes that the level of geography for this part of the analysis in the Assessment Tool will provide for a meaningful fair housing analysis. However, HUD notes that States may receive information in community participation that indicates a need to evaluate a fair housing issue at a lower level than a County.

Analysis of publicly supported housing should include information from residents. Commenters stated that in the publicly supported housing section, the tool should direct program participants to include information about whether residents prefer their developments to be improved and preserved or prefer assistance in moving to areas that may offer other opportunities. The commenters stated that the tool should also require a description of efforts made, underway, or planned to preserve project-based section 8 developments at risk of opting out of the program or prepaying their mortgage, or of other HUD multifamily assisted developments from leaving the affordable housing stock due to Federal Housing Administration (FHA) mortgage maturity. The commenters stated that the tool should also require a description of efforts to preserve LIHTC developments including at year 15 and beyond year 30. A commenter stated that the tool should require program participants to identify areas where residents are suffering from or at risk of displacement due to gentrification.

HUD Response: HUD appreciates the suggestions of these commenters and agrees that this sort of outreach would lend invaluable information to States when conducting their AFH. HUD notes that States must comply with the requirements for community participation, consultation, and coordination as set forth at 24 CFR 5.158, and the applicable regulations in Part 91.

Restore the section on mobility for residents of publicly supported housing. Commenters stated that HUD should restore the discrete section on mobility for residents of publicly supported housing to all AFH Assessment Tools. Commenters stated that the discrete sub-section on mobility for residents of publicly supported housing must be restored because of the various level involvement of States—*i.e.*, State-level agencies in 30 States administer the HCV program, two States administer public housing throughout the State or in most of the State, many States have State-level agencies that have oversight for HUD's multifamily assisted properties, and State housing agencies have the potential to play a catalytic role in facilitating housing mobility for residents of publicly supported housing, including properties converted under RAD. The commenters stated that HUD should at least include State-administered HCV and public housing programs in the list of programs for which information is required under section V(C)(1)(d)(i) of the tool.

Another commenter stated that the policy options for increasing mobility at the county level as opposed to the neighborhood level are significantly more challenging. The commenter stated that to make funding decisions accordingly, the State would need to completely rework its method of distribution and scoring criteria for grant applications.

HUD Response: HUD appreciates the suggestions of these commenters, HUD has stated previously that it decided to address many issues related to mobility in the contributing factors, such as the contributing factors of "Impediments to Mobility." HUD also asks about mobility in the additional information questions at the end of each section of the Assessment Tool. HUD also appreciates the commenters' recommendation to add State-administered HCV and public housing programs to the "Other State Administered Programs Related to Housing and Urban Development" subsection. At this time, HUD declines to include this reference.

Clarify the analysis needed for Rental Assistance Demonstration (RAD) units. Another commenter suggests that the final tool instructions should clarify why RAD units should be analyzed as part of HCV and not project-based Section 8 subsidies.

HUD Response: HUD has clarified the instructions to the Assessment Tool that now state data on projects converted under RAD is included in the data on project-based Section 8 or HCVs. HUD has provided the following language in the instructions: "Relevant information may also include assisted housing converted under the Rental Assistance Demonstration (RAD) program. Data on RAD-converted properties are not provided separately, but are included in the overall data on Project-based Section 8 and for Project Based Vouchers in the overall data on Housing Choice Vouchers."

Limit analysis for the State to the use of HUD funds. Commenters stated that the State Assessment Tool should not cover funding sources outside the purview of HUD. The commenters stated that LIHTC and the State's QAP, as well as, "other State-administered programs related to housing and urban development" are outside HUD's statutory authority given to it by Congress. The commenters stated that States do not agree that accepting HUD funds requires the State to use non-HUD funds in a manner proscribed by HUD. A commenter stated that such requirement poses serious concerns under the Tenth Amendment to the United States Constitution. The commenter stated that the tool, as crafted, effectively creates a process that promotes race-based decision-making by recipients of HUD funds in violation of the Equal Protection Clause of the United States Constitution.

HUD Response: The Fair Housing Act provides HUD specific authority over programs and activities relating to housing and urban development. Program participants are required to analyze Low Income Housing Tax Credits (LIHTC) data as a part of their Assessment of Fair Housing (AFH). LIHTC are the primary producers of affordable housing nationwide. Additionally, LIHTCs are required to include a certain proportion of affordable units and accept vouchers, and States play a pivotal role in deciding where this housing is located. For these reasons, an analysis of this type of affordable housing is highly useful and appropriate when conducting a fair housing analysis.

LIHTC questions are important to a State's analysis, but need to be more detailed. A commenter stated that the questions relating to the analysis of LIHTC are an appropriate information collection process that will have practical utility for evaluating States' AFFH obligations. Another commenter similarly stated that a statewide analysis of LIHTC will not only allow the State to identify issues in its own administration of the program, but to identify areas where the lack of LIHTC developments indicates there may be policies preventing affordable housing from being located in high-opportunity areas. The commenter stated that "concerted community revitalization plans" must be defined in a way that ensures they are meaningful and effective, and must set out clear standards for review and assessment of these plans, and that allowing jurisdictions to simply designate nominal "revitalization" areas perpetuates segregation by steering LIHTC developments into distressed neighborhoods. The commenter further stated that since LIHTC is a housing production program, the State's primary concern in assessing its QAP and program administration must be whether it is producing housing opportunities in high opportunity areas. A commenter supportive of the LIHTC questions stated that HUD, however, should respect the LIHTC administering agencies, Department of Treasury and Internal Revenue Service (IRS), and provide States with considerable discretion in designing their QAPs.

Other commenters stated that in addition to describing program-by-program demographics and distributions, States should describe the combined distributions and overall demographics in macro to fully evaluate the impacts of publicly supported housing together, since different programs often have inherently different demographic and geographic distributions (for example, market-driven home mortgages and demand-driven LIHTC).

Another commenter recommended that HUD include a question asking about efforts to leverage the LIHTC program to increase the supply of housing units that are accessible to persons with disabilities.

A commenter stated that HUD should clarify how States with sub-allocators should handle the analysis of states' LIHTC and QAPs. A commenter pointed out that the State of Minnesota has a unique system in which the development of QAPs are a separate process for the State and several local level sub-allocators. The commenter stated that sub-allocators are participating jurisdictions and will be conducting their own assessment of fair housing, so when applicable, local participating jurisdictions with their own QAPs and States should be required to provide analysis of only the QAPs that are in their control. The commenter stated that while the evaluation of LIHTC properties funded through 9 percent and 4 percent tax credits will be valuable, the commenter clarifies that the 9 percent credits are those most impacted by QAPs.

A commenter stated the LIHTC questions are important but need more detail, including the differing weights assigned to preferences and incentives; the question must also discuss results. The commenter stated that additional guidance is also needed with respect to the analysis of LIHTC, including recommendations for local data sources that are easily accessed by states, improvements to the instructions for this section, examples of the types of agreements that include restrictions against discrimination of voucher holders, and the opportunity for states to include any regional policies and initiatives. The commenter stated that the LIHTC section of the publicly supported housing section is confusing as written. The commenter stated that it seems to require the State to research all local land use law in over 200 communities in the State and provide an explanation, town-by-town of how each influence the location of LIHTC units. The commenter stated that it believes the question was meant to determine access to LIHTC units instead. Another commenter stated that more robust instructions would help ensure that the LIHTC sub-section prompts a meaningful fair housing analysis; the instructions should explain that 26 U.S.C. 42(m)(1)(B)(ii)(II) requires that housing finance agencies give priority among selected developments in high-poverty qualified census tracts if those developments contribute to concerted community revitalization, but the statute does not more broadly require incentives for developments in high poverty neighborhoods.

HUD Response: HUD appreciates these commenters' observations and recommendations. HUD has revised some of the questions in the LIHTC subsection of the Publicly Supported Housing section of the Assessment Tool. HUD believes that the questions relating to LIHTC in the Assessment Tool now address these issues more fully. For instance, HUD has included language in the questions relating to units for persons with disabilities, permanent supportive housing, and preservation of existing long-term affordable housing.

HUD will continue to provide guidance and technical assistance to program participants, and will further address the analysis of LIHTC when it updates the AFFH Rule Guidebook. HUD also notes that, as with all questions in the Assessment Tool, program participants need only use local data and local knowledge when they meet the criteria specified at 24 CFR 5.152 and the instructions to the Assessment Tool. In the case of "local data," under the regulation's definition, such data are "readily available at little or no cost." In the case of "local knowledge," under the regulation's definition, such information, "is known or becomes known" to the program participant, indicating it is either already within the state agency's own information or it is made available, for instance from another agency or through information that can be considered in the community participation process.

Comments on local data and local knowledge. Commenters stated that while the AFFH final rule defines "local data" and "local knowledge" as readily available information that requires little to no cost to obtain, it also notes that local data may be more relevant and current than HUD-provided data and requires program participants to supplement HUD-provided data with local data when it is relevant and easily obtainable. The commenters stated that this creates an expectation of analysis, instead of an allowance of, local data without considering the enormity of data that is available to states through a reasonable amount of searching the internet alone. The commenters stated that jurisdictions with strong affordable housing and academic research communities that provide a wealth of information at little to no cost are penalized because they have a higher burden of reviewing and analyzing locally available data since more high quality data is available. The commenters also stated that absent dedicated funding from HUD, a State is unlikely to be able to analyze and properly present local data in a manner consistent and relatable with other components of the tool, nor can State housing agencies adequately compile and analyze local data that is available at little to no cost with respect to the non-housing elements that the tool instructs States to analyze. The commenters further stated that without HUD provided guidance to its grantees and the public regarding the extent to which local data must inform conclusions and be displayed within the AFH, States are vulnerable to complaints even where HUD considers a State to have met its burden; oral comments from HUD staff are not sufficient and States will expend more resources defending complaints, as will HUD in processing such complaints.

Other commenters stated that HUD should give States the flexibility to use HUD-provided county data, tract level data, or locally supplied data as appropriate. The commenters stated that, for example, educational access is not a meaningful indicator at the county level, and while the local level (tract based) is more appropriate, the state would utilize data directly from its department of education.

Other commenters stated that collecting the data required to provide meaningful explanations would be extremely challenging at best and although States are not required to collect primary data they are uncertain of how to compile the information for the assessment without doing so. The commenters stated while the tool says States are not required to collect primary data, it is unclear how States will otherwise acquire local data besides administrative data sources. The commenters stated that even though collecting primary data is not required, it would require time consuming and costly surveys to amass the other primary qualitative data to conduct analyses in areas such as education.

Commenters stated that HUD should not permit program participants to assert that data and knowledge are unavailable, which HUD currently proposed to be a potentially "complete and acceptable response." Rather, HUD should require the use of local data and local knowledge, including for persons with disabilities served in home or community-based settings and those served in institutions, assisted living facilities, and those ready for discharge from psychiatric hospitals. Another commenter stated that program participants should be required to describe efforts to identify supplemental data and local knowledge from sources such as universities, advocacy organizations, service providers, planning bodies, transportation departments, school districts, healthcare departments, employment services, unions, and business organizations, and they should be required to summarize and report what information it chose to use and why.

Other commenters stated that States should have flexibility to determine when including fine-scale local data is appropriate. Commenters stated that States should be allowed to use their own data to complete the tool and HUD data should be optional since State data may be more representative of the State's true characteristics.

A commenter stated that HUD should not impose a statistical validity test on State and local data that is so strict as to prevent States from using certain data sources that may be helpful in their planning efforts.

Another commenter asked whether HUD data supersede local data. The commenter stated that it appears that local data needs to validate HUD data and it is unclear what happens when the data results are inconsistent.

A commenter stated that the tool should be structured such that the tool provides recommendations on the use of local data and knowledge including on scope of issues, best practices for information-gathering, and coordination with local agencies.

HUD Response: HUD appreciates all of the commenters' suggestions and recommendations. HUD has provided language in the instructions to the Assessment Tool regarding the use of local data and local knowledge. Additionally, the AFFH Rule Guidebook addresses the issue of when to use this information. Further, HUD has explained that HUD-provided data must be used when conducting the AFH; however, in the event that the program participant has local data that is more current or accurate than the HUD-provided data, the program participant is welcome to use such data, so long as it provides HUD with the local data and an explanation of why it is being used in place of the HUD-provided data. HUD has explained how it will assess the statistical validity of local data above.

An analysis of income-levels is important. A commenter stated that when discussing affordability of housing units in the definitions section and throughout, it is important to clarify that it is not sufficient to have units that are affordable at 80 percent of area median income (AMI) or other moderate incomes. The commenter stated that when looking at inclusionary zoning or other affordable housing policies, it is important to consider which income levels are included and excluded. The commenter further stated that availability of housing at different affordability levels should be included in the definitions of "location and type of affordable housing" and "availability of affordable units in a range of sizes."

HUD Response: HUD appreciates these suggestions, and notes that some of the HUD-provided data does include income levels. In addition, consideration of the level of affordability of housing for lower income groups is included in the contributing factors, "availability of affordable units in a range of sizes," "lack of affordable, accessible housing in a range of unit sizes," and "location and type of affordable housing. HUD will further consider additional guidance as it relates to the affordability of housing and how it might relate to fair housing issues.

Comments Specifically Directed to Burden

While many commenters commented on burden; the following comments supplemented the comments already provided on burden by specifying the number of hours they believe it will take to complete the AFH.

Several commenters stated that the estimate of 1,000 hours per year to complete this paperwork is excessive. The commenters asked what paperwork can be eliminated in order to complete this form. The commenters also asked what is going to be done with this information once HUD collects the information. A commenter stated that HUD should hire contractors and not place the task onto PHAs. Another commenter stated that if the State of Massachusetts assumes even half of the estimated burden of 120 hours of staff time per PHA that the State coordinates with, based on HUD's estimate that one-third of PHAs may seek to enter into joint AFHs with their relevant State, this would be an additional burden of approximately 7,800 hours of staff time.

Commenters stated that HUD's estimate of the burden of compliance with the proposed tool is not accurate, that the tool will take at least 2,500 hours to complete. Commenter stated that the estimate of 1,500 hours may be too low considering the volume of information and scope of work, which falls outside the normal activities for most agencies. Commenters stated that they would need to devote a full-time staff person to do the AFH for 37 weeks. A commenter stated that it estimates the burden at 2,000 hours and a cost of $150,000 to $200,000. Another commenter stated that the burden estimate is glaringly low and will be four to five times the 1,500 hours that HUD estimated. Another commenter stated that it spent 6,000 hours to complete its last AI over a two-year period. Another commenter stated it will take 4,000 hours to complete the AFH. Another commenter stated that it took two individuals 6 months to complete the AI and expect completion of the AFH to take considerably longer. A commenter stated that its State is considering hiring additional staff, reallocating staff resources, and/or contracting out, but this will have major budget implications for the agency, especially because of the level of specialized experience required to administer the tool and analysis.

Another commenter stated that in the State of Ohio, acquiring and evaluating the data would involve a significant obligation of resources from at least 11 different State agencies and would require an estimated 1,500 hours. The commenter stated that the State of Ohio will likely be forced to contract with an outside vendor and could costs hundreds of thousands of dollars which will likely have to come out of funding for Training and Technical Assistance and administration of the State's HUD programs. A commenter stated that the assessment will be very expensive, and that the State of Iowa spent $148,000 on a consultant to prepare the 2015–2019 Consolidated Plan and Analysis of Impediments to Fair Housing and expects the cost to prepare the proposed tool to be even greater; with CDBG and HOME programs experiencing considerable reductions since 2010. Commenters stated that States have fewer administrative dollars to pay for the development of such plans. A commenter stated that the Massachusetts Department of Housing and Community Development estimates that the time required would be at least 5,000 hours of staff time plus approximately $150,000 in consultation fees.

HUD Response: HUD appreciates and understands the concerns of these commenters. Now that HUD has announced that there will be a second 30-day comment period relating to the data in and functionality of the AFFH–

T for States and Insular Areas as described above, the public will have an additional chance to provide HUD with feedback.

HUD appreciates the work of its program participants in this area. HUD is committed to and will continue to find ways to reduce burden for its program participants while still providing for an appropriate fair housing analysis and the setting of meaningful fair housing goals. Furthermore, HUD will continue to provide training and technical assistance to program participants to increase their capacity to conduct a meaningful AFH.

Comments in Response to HUD Specific Issues for Comment

As noted earlier, HUD solicited comment on 6 specific issues. The issues and the comments received in response to these issues are as follows:

Content of the Proposed State and Insular Area Assessment Tool

1a. Which approach to the opportunity indicators would be more beneficial in eliciting an appropriate fair housing analysis from States and insular areas? (That is, more general questions or targeted questions)

Commenters were divided on the approach to take. A few commenters stated that they preferred more general questions, as opposed to the targeted ones, as proposed by HUD. The commenters stated that more general questions would enable States to structure and prioritize their analysis as well as discern when it is appropriate to apply a more targeted analysis in smaller communities and rural areas. The commenters further stated that targeted questions go too far into some areas that are only tangentially related to housing. Other commenters stated that the targeted questions require an analysis of information and polices that are beyond the State's purview, control, and understanding. The commenters stated that they would not be able to provide meaningful answers to guide program decisions and allocations of CDBG funds, so these questions should be eliminated from the State tool.

Another set of commenters supported adding targeted questions regarding the five topics proposed by HUD. The commenters suggested specific areas of focus within each of these topics: (1) For re-entry, the tool should ask about existing laws, policies, and practices that help or hinder successful re-entry of members of protected classes to housing, employment, education, counseling, and other opportunities; (2) for emergency management, the tool should add a question focused on emergency preparedness and response for people with limited English proficiency (LEP); (3) for public safety, the tool should refer to access to housing for women and children encountering or threatened with domestic violence; (4) for public health, the assessment tool should refer to lack of access to quality, affordable food and should ask about the impact of the policies, practices, and resources of neighboring states/the broader geographic area.

HUD Response: HUD appreciates the commenters' feedback on this issue. As stated above, HUD has included certain opportunity areas for consideration if they arise during community participation. HUD has decided to include additional opportunity areas in the "Additional Information" section of the Disparities in Access to Opportunity section of the Assessment Tool and has specified that this portion of the analysis is limited to information obtained through the community participation process. HUD notes that other categories that are not listed may also be identified through the community participation process.

1b. Has HUD captured the appropriate level of information from States and insular areas? Are there additional areas of analysis that should be included given the areas of responsibility, programs, policymaking, and jurisdictions of States and insular areas?

Several commenters stated that the tool requests an extraordinary amount of information that will be extremely difficult for States to collect and analyze in a meaningful matter and relies too much on local data; some questions are nearly impossible to answer from a statewide perspective, such as questions on education policy which will vary from district to district and questions on zoning and land use policies. The commenters stated that the scope of the proposed tool must be scaled back significantly so that State grantees can reasonably conduct a meaningful AFH on issues they can meaningfully address.

Other commenters identified specific targeted questions for inclusion. A commenter stated that a discussion of both segregation and integration are important, but HUD only asks States to identify groups living in these areas; a more meaningful assessment would include case studies outlining characteristics, such as favorable policies and programs evident in integrated areas. The commenter also stated that assessing the demographic trends over time with respect to segregation and integration is important, but that it would be valuable to require States to identify within areas that experienced a significant demographic change, any patterns that can be attributed to laws, policies, practices, or market forces. The commenter stated that this will aid in identifying local and regional forces that are counter to the State's obligation to AFFH. The commenter further stated that while it is important for the State's to assess laws, policies, and practices, it is also important to review a history of laws, policies, and practices that contributed to the demographic patterns currently evident in a State because understanding the history of segregation and the public policy that shaped it is indispensable to an assessment of fair housing. Another commenter stated that States should consider fair housing issues affecting protected classes that are protected by State fair housing laws—even if those groups are not explicitly protected by the Fair Housing Act (*e.g.*, members of the LGBT community, section 8 voucher holders).

Another commenter stated that HUD should reconsider the development of a de novo tool for States rather than adapting the one created for local governments because of the different scales involved. The commenter stated that most States are much larger and more geographically and demographically diverse than individual communities. The commenters stated that States need flexibility in tailoring the content of the assessment to ensure that analysis conducted will be meaningful and under the authority of state housing agencies. The commenters stated that States should have the flexibility to use the HUD data at appropriate scales, drilling down into local analysis of areas such as opportunity for employment, education, and transportation in locations of the State where they are most impactful. The commenters stated that many of the opportunity questions in the State Assessment Tool should be removed because they are only appropriate at the neighborhood level. The commenters stated for a large State, local decision making and local policies are the bases for determining whether housing is "fair" since it is not reasonable to expect State residents to move long distances from their current locations to access housing opportunities.

A commenter stated that the tool should instruct State participants to examine how State level policies affect fair housing to avoid the hazard that AFH may produce a compilation of local level issues while failing to document meaningful responsibilities of the States and State-level structural issues. The commenters stated that HUD should make this explicit throughout the guidance, such as: Adding instructions and expanding lists in the discussions of contributing factors; inserting a paragraph or two that illustrates this in the instructions; adding examples of structural State-level goals into the example goals on page 42; and amending the contributing factor descriptions.

This commenter also stated that States should be prompted to consider the following issues: State tax structures; fiscal systems, such as revenue distribution with regard to transportation (*i.e.*, highway or transit funding), or funding programs that incentivize certain development patterns, *e.g.*, economic development of greenfields; laws and regulations in areas that affect redevelopment, such as foreclosure, bankruptcy, land banking; State-level laws and policies that affect or incentivize zoning and other land use structures; administration and funding programs of social services; ways that States create barriers or disincentives (or can set goals that encourage) regional cooperation among local jurisdictions, as with tax-sharing, government consolidation, joint planning and program implementation, and shared services; and executive decisions to sign into law legislation which prevents local governments from adding protected classes to their local fair housing laws.

HUD Response: HUD appreciates all of the recommendations of the commenters. While HUD is maintaining the basic structure of the Assessment Tool as outlined by the AFFH Rule, HUD has made significant modifications to this Assessment Tool to account for the differing level of geography, authority, and role of States. HUD remains committed to issuing Assessment Tools that are tailored to each type of program participant, appropriate to their roles and responsibilities, in a manner that strives to reduce burden, while still achieving a meaningful fair housing analysis. Part of this commitment is being implemented with the additions of the extended PRA process, including a second 30-day comment period on the State level data in the AFFH–T so that the public and program participants may see how the data HUD is providing will be tailored to the State.

In response to the comments offering specific suggestions for improvements, HUD has made a number of changes. These include amending some of the contributing factor descriptions based on these commenters' suggestions. For example, HUD has amended the description of "Land use and zoning laws" so that it is more specific to the role of States. HUD also acknowledges the limitations of States in terms of their authority or lack thereof imposed by State and local law. HUD has added language to the questions and instructions to clarify that States are not required to compile inventories of local laws and practices but should focus on trends affecting fair housing issues in the State or areas of the State.

In terms of the comments on requiring analysis of entitlement areas, HUD has declined to remove consideration of all areas of the State, but has made some clarifying modifications. The Assessment Tool still requires State wide assessment, including fair housing issues across the state, including entitlement areas.

Nonetheless, HUD believes that in order for the State to set meaningful fair housing goals, it must conduct an analysis of the entire State. As stated above, States may refer to AFHs of entitlement jurisdictions within the state, but should keep the considerations mentioned above in mind. Note, States are accountable for the information contained in the AFH they submit to HUD.

States With Rural Areas, Tribal Areas and Other Key Differences Among States

2a. Are there particular questions that HUD should include in the State and Insular Area Assessment Tool to ensure the appropriate focus on rural areas? What sources of information do States have access to when considering fair housing issues in rural areas? HUD seek comment on any additional questions or additional data that should be included and the applicable section of the Assessment Tool to address how States and insular areas can assess rural areas.

Commenters stated that, in most cases there would be little or no local data for the balance of the State. Commenters stated that local data is likely to be administrative such as public housing units, vouchers, and associated geographic and demographic data for those units/vouchers and the State does not have access to this data. Commenters stated that other possible sources include social services, school, and health department data, but the State does not have access to this data either and it is unclear at this time how feasible it would be to obtain it.

Commenters stated that the Ohio Poverty Report, published by the Ohio Development Service Agency, identifies areas of highest concentration of people living in poverty, and these counties have predominantly white populations. The commenters asked whether HUD considered that these areas are predominantly white, not because of discrimination but because minorities do not want to move to areas that are limited on employment, transportation, medical care, grocery stores and other services. The commenters stated that diversifying these counties will ensure fair housing but will not help people rise from poverty because these areas are impoverished.

A commenter stated that HUD should prioritize establishing housing in areas with access to services, employment, and medical care and not move people away from these services.

Other commenters stated that county-level maps and data are likely to be misleading, particularly in States with large rural areas. The commenters stated that data quality and availability is a severe impediment to accurate analysis in States with large rural areas, and acquiring local data is prohibitively burdensome. The commenters stated that the tool should explicitly incorporate flexibility for States to determine the appropriate scale for addressing their rural areas. Another commenter stated that the characteristics of a small city could strongly influence the data value for a county, and thereby misrepresent the non-urban portion of that county.

Commenters stated that HUD data is limited on rural areas and therefore States should be able to use their own data instead of HUD data. A commenter stated that HUD should provide guidance instructing States to consider additional local data for rural areas when evaluating the dissimilarity index for rural communities, and should provide examples of potential data sources.

Other commenters stated that rural areas have particular challenges regarding data quality with respect to all areas of analysis required in the AFH. The commenters stated that the HUD provided data on areas of opportunity are not as applicable in rural areas as in urban, and said, for example, there is less transit in rural areas so these areas would be unfairly biased. The commenters also said that HUD data is also biased for quality schools in rural areas since there is usually only one choice for school attendance in the area, unlike in an urban area, so prioritizing locations based on school quality could dismiss many markets who otherwise have significant needs for affordable housing. Another commenter stated that it is not clear how States are expected to analyze public infrastructure in rural areas, and the lack of certain infrastructure that requires higher population densities may or may not imply poverty or lack of opportunity. The commenters stated that a State cannot use its CDBG or HOME funding in HUD direct entitlement/urban areas of the State and these are where the population is densest, so the tool will indicate the best place for resolving fair housing impediments are in the urban areas yet state's federal funding cannot be used there.

A commenter stated that in rural areas, there are more cases of a lack of education on the part of local leaders or business people to the needs of fair housing and a lack of ordinances to assist development in these areas.

Other commenters stated that there will be significant differences between States that are rural and those with large urban cores or a combination of both, but there is not enough information to determine how the assessments might be made and how the tool might make these distinctions since a fully functioning map tool is not yet available.

A commenter expressed concern about the specific questions in the tool that will apply in a rural context; it is hard to interpret the phrase low or high poverty in a rural context when "neighbors" may be ¼ mile or more away from each other. The commenter stated that the tool does not contemplate significant differences in States' geographic, demographic, organizational, and governance structure. The commenter described itself as a State with 159 counties and 188 PHAs and diverse geographic areas, and that it is unclear how the analysis for rural areas will be achieved.

Another commenter stated that determining indicators for access to opportunity in rural areas will be difficult and in smaller States, low-income households tend to live in metropolitan areas in order to access what they need if they do not own an automobile. A State commenter stated that the template does not define "low poverty neighborhood," but requires an analysis of it in both urban and rural areas. The commenter stated that this is not realistic for rural areas because there is often no data available, even at the local level. The commenter stated that the basic needs of rural areas are different from urban areas; therefore, analyzing general issues such as employment, education, and disaster emergency preparedness does not reflect the primary challenges of the State's rural communities.

A commenter stated that so long as a community provides services and resources, people with vouchers should be allowed to use them wherever they wish. The commenter stated that by requiring various populations to move for the sake of opportunity would mean moving out of small town America and require vouchers to be used only in large metropolitan areas where we as a nation believe all opportunity exists.

HUD Response: HUD appreciates the views of the commenters and their feedback. HUD acknowledges that data in rural areas presents certain challenges for States and is committed to providing technical assistance and guidance on how to assess fair housing issues in rural areas. In response to comments on the unique needs of rural areas, and how State agencies may consider rural issues, HUD has added the following language to the instructions:

"HUD acknowledges that the HUD-provided data on some opportunity indicators, such as transit and jobs proximity index, while potentially useful for assessing metropolitan and suburban areas will be less applicable for rural areas. State agencies may also need to utilize measures that are more relevant for their rural areas. For example, water and sewer and the need for basic infrastructure may be appropriate and necessary to analyze. Some HUD-provided data may be interpreted differently in rural areas and urban areas (*e.g.*, the R/ECAP thresholds and opportunity indicators). This is not intended to result in comparisons between different parts of the state that would result in inappropriately setting goals for affordable housing and economic development activities. HUD does not intend the analysis to limit investment decisions for affordable housing or community development in rural areas when compared to other parts of the State. HUD programs, including CDBG, HOME and Section 8 play an important role in addressing the needs of rural areas. The State's analysis of non-entitlement areas can inform goal setting within those areas. States should take into account the unique housing and economic development needs of rural areas in informing their program-related goals."

2b. HUD seeks comment on any key areas beyond those HUD has presented in the State and Insular Area Assessment Tool.

Several commenters asked that HUD not add any areas to the tool, but rather, reduce the areas of analysis expected of States.

Another commenter stated that the tool should require States and Insular areas to set as many goals as are necessary to address each contributing factor. The commenter stated that the tool should clarify that inclusionary zoning is a strategy for addressing contributing factors rather than a contributing factor itself by including the phrase "lack of" in front of "inclusionary zoning" in the bullet list of relevant types of land use and zoning laws. A commenter suggests that the definition in the Appendix be changed to reflect this.

Another commenter suggested very specific questions for inclusion in the tool. The commenter stated that the tool should ask more specific questions about gentrification and displacement, since these patterns pose a risk of contributing the re-segregation of city neighborhoods; States and Insular Areas play an important role in the administration LIHTC and other programs so there is a great deal they can do to ensure that revitalizing neighborhoods in cities emerge as stable, integrated communities of opportunity in which resident choice and autonomy is respected. The commenter also stated that the tool should ask specific questions about the administration of relocation assistance and the location of replacement housing, particularly because States have a unique role in administering federal disaster relief and recovery funds. The commenter further stated that HUD must include a question about whether a State has a truly "substantially equivalent" fair housing law in the Fair Housing Enforcement, Outreach Capacity, and Resources Analysis, and HUD must ask whether States have adopted legislation that limits the ability of local governments to protect the fair housing rights of individuals and families. The commenter stated that the tool should clarify the definition of "substantially equivalent" in the context of State and Local Fair Housing laws by explaining that the Federal Fair Housing Act provides a floor and not a ceiling, and they must also have procedures for adjudication and enforcement that conform with those under the Federal Fair Housing Act. The commenter stated that there is evidence that some States do not know what the term "substantially equivalent" means, and in light of actual or threatened changes to State fair housing laws and failure to properly administer programs funded under the Fair Housing Assistance Program, it is likely that States are out of compliance with their purported substantial equivalency. The commenter stated that HUD should provide examples of barriers to fair housing present in the procedures or practice of enforcing the law. The commenter stated that the tool should provide recommendations on use of Fair Housing goals to inform planning processes, including examples of relevant goals and steps that can be taken to connect fair housing with community and interagency planning.

HUD Response: HUD appreciates these commenters' suggestions. HUD has revised the description of land use and zoning in the Appendix to reflect the commenters' recommendations regarding inclusionary zoning. HUD also notes that the Assessment Tool previously and continues to included questions and contributing factors relating to State or local laws that have been determined to be "substantially equivalent" to state and local fair housing laws. HUD has also revised the questions in the Publicly Supported Housing Section, including the LIHTC-related questions in response to the recommendations from commenters.

2c. Does the Assessment Tool adequately take into account, including in the terminology used, the issues and needs of Indian families and tribal communities while also factoring in the unique circumstances of tribal communities?

A commenter stated that tribal areas should not be required to be included as part of any required full State analysis since reservations are primarily in remote locations without access to opportunities and often have concentrations of poverty, and these areas are sovereign nations within the borders of the State and are not required to provide the State with data. Another commenter stated that HUD must use appropriate indicators to assess fair housing in tribal areas. The commenter stated that these areas are likely to score poorly on measures such as use of public transportation and concentration of poverty. The commenter expressed concern that there will be penalties when these areas score low when considering disparities in access to opportunity. Another commenter stated that the tool does not adequately take into account the needs and issues affecting tribal communities, and the tool should focus on infrastructure that will help raise the standard of living in these communities.

HUD Response: HUD appreciates the feedback from these commenters. HUD notes that the Assessment Tool does not explicitly require an analysis of tribal areas, but notes that inclusion of such an analysis, where appropriate and consistent with applicable law would be encouraged. If there are areas of analysis States believe to be of particular importance with respect to tribal areas, and to the extent allowed by law, they can set goals to address these fair housing issues, and HUD would encourage States to do so. HUD continues to seek comment on the needs and considerations regarding Native American reservations and trust lands and the unique government to government relationship between Native American tribal governments and the United States government. A specific request for public comment on these issues is included at the end of this Notice.

Disability and Access

3. Is the Disability and Access section of the Assessment Tool adequately clear such that it includes the analysis of prior sections as it relates to disability and access issues?

A commenter stated that HUD should allow and encourage States to structure the disability and access section of the assessment with their Olmstead planning efforts by giving flexibility in the format and structure of this section. The commenter stated that, for example, Minnesota's Olmstead plan established baseline data and demographic analysis including segregated setting counts and the State would use these baseline data and metrics and subsequent research in its Assessment of Fair Housing, where applicable. Another commenter stated that in the housing accessibly questions, include language relating to State actions to ensure compliance with Federal and State accessibility requirements and require a description of pending or settled Olmstead-related lawsuits, settlements, or other agreements. In contrast to this latter comment, a comment stated that the sentence in the Disability and Access section, which states—"Include the extent to which individuals with disabilities who require accessible housing move out of or into the State to obtain accessible housing"—will be difficult if not impossible for States to determine this.

Other commenters stated that HUD should clarify that definitions of persons or people with disabilities is consistent with the definition of the Americans with Disabilities Act, where an individual with a disability is a person who: (1) Has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Another commenter stated that while a portion of the tool does cover assessing the needs of persons with disabilities, so much of the tool correlates to quantitative map results that are focused entirely on race and national origin raises concerns that it may be hard for the State to defend policy decisions to assist persons with disabilities if the same policy decision is not in harmony with the more quantified race-based results of the tool. The commenter stated that many of the questions relating to disability are highly localized, making State policy in this regard more imprecise.

A commenter stated that the section on disability and access is clear as it relates to disability and access issues, but should be condensed to include focus areas that the State can really affect change in. A commenter similarly stated that local governments also have Olmstead obligations. The commenter stated that the Assessment Tool for Local Governments and the Guidebook provide little guidance in this regard. The commenter recommended that HUD develop additional guidance to better ensure that connections are made between the State and local governments engaged in AFH planning.

Another commenter stated that HUD should ask States about the steps they take to monitor their publicly supported housing to ensure compliance with accessibility requirements and about where accessible units are located in relation to areas of opportunity and significant amenities. The commenter stated that HUD should omit the question asking States to assess whether persons with disabilities have had to move out of State to obtain accessible housing.

A commenter stated that HUD should clarify that "sheltered workshops" rather than supported employment services raise civil rights concerns. This commenter also stated that HUD should clarify that the focus of educational opportunities for persons with disabilities should be on opportunities in integrated educational settings.

HUD Response: HUD thanks the commenters for these recommendations. HUD recognizes that there is a lack of nationally-uniform data related to disability compared to other protected characteristics; however, no protected class under the Fair Housing Act is more important or more deserving of a fair housing analysis than another. HUD will continue to explore options for including additional data related to disability.

HUD has included two questions related to the State's monitoring in the Fair Housing Monitoring and Enforcement, Outreach Capacity, and Resources section of the Assessment Tool.

HUD appreciates the numerous comments suggesting clarifying, technical and grammatical edits in the Disability and Accessibility analysis section, the accompanying instructions and relevant contributing factors. In response, a number of clarifications and revisions have been incorporated into the assessment tool. For example, regarding the commenters' recommendation regarding "sheltered workshops," language was added to distinguish such institutionalized or segregated settings from other supported employment services that are not delivered in such settings. Similar clarifying and technical edits were made to the instructions and relevant contributing factors.

HUD appreciates the other comments and intends to provide further guidance in support of the Assessment Tools to assist program participants in meeting their AFFH obligations under the Final Rule.

Contributing Factors

4a. Are there additional contributing factors that should be included in the State and Insular Area Assessment Tool that are of particular importance for States and insular areas?

Commenters stated that the following contributing factors should be added to the disability and access section: Community opposition, location and type of affordable housing, occupancy codes and restrictions, private discrimination, access to financial services, availability, type, frequency and reliability of public transportation, lack of state, regional, or other intergovernmental cooperation, admissions and occupancy policies and procedures including preferences in publicly supported housing, impediments to mobility, lack of private investment in specific areas within the State, lack of public investment in specific areas in the State including services and amenities, siting selection polices, practices, and decisions for publicly supported housing, and source of income discrimination. A commenter requested that HUD add the contributing factor of "Threats to affordable housing preservation" and the commenter provided a description of this factor as well. Another commenter stated that environmental hazards should be listed as a contributing factor to R/ECAPs.

A commenter requested that HUD add "Access to public space for people experiencing homelessness" as a contributing factor throughout the assessment because laws that criminalize the homeless or otherwise burden the use, or access to, public space for those without shelter or housing a deleterious and segregative impact on living patters and fair housing opportunity that is not captured in any of the contributing factors. The commenter stated that HUD could create a factor that mirrors "regulatory barriers to providing housing and supportive services for persons with disabilities" to include laws that have the effect of restricting provision of services to persons experiencing homelessness.

A commenter stated that HUD should examine and consider the potential unintended consequences of major transportation investments on land use patterns, and hence housing affordability, since this is an area of policy over which States do have some control and some analysis tools have already developed. The commenter stated that in many ways, the patterns of inequity and segregation that the AFFH rule seeks to dismantle are byproducts of transportation policies and plans implemented by State agencies, particularly highway departments. The commenter stated that it recently completed a research project that made sophisticated econometric models of how real estate markets respond to transportation projects available within the planning tools commonly used to protect future land use conditions. The commenter stated that as a result, it is now possible to quantify and compare the impacts of alternative transportation plans on housing costs burdens and display this information on a map or chart for easy review.

HUD Response: HUD appreciates these recommendations and has made certain revisions to the Assessment Tool in response to the comments. HUD has added contributing factors that were included in the Assessment Tool to other sections of the Assessment Tool, and has revised some of the descriptions of the contributing factors located in the Appendix. HUD has also added two new contributing factors of "Nuisance Laws," and "Loss of Affordable Housing." HUD has attempted to strike a balance between the number of potential contributing factors that are listed in each section of the analysis in order to focus on those factors that are most likely to pertain to that section while considering program participant burden to review each of the listed potential factors. Program participants may also consider additional contributing factors, including those listed in the appendix or other factors that do not appear in the overall list. HUD has also incorporated language into the descriptions of certain contributing factors relating to survivors of domestic violence and homelessness in response to comments received.

4b. Contributing Factors Comments Generally.

Commenters stated that the contributing factors are uniquely local variables that, by definition, will exert influence in different ways in different jurisdictions. The commenters stated that the tool should allow States to focus on appropriate scaled State-level contributing factors and provide the flexibility to incorporate detailed local level analysis if necessary. Other commenters stated that the list of contributing factors should be clarified as being examples and certain examples related to local polices and laws should be removed, such as land use and zoning laws.

Commenters stated that only nine of the provided contributed factors are amendable to broader State analysis: (1) Lack of assistance for transitioning of assistance for transition from institutional settings to integrated housing; (2) state or local private fair housing outreach and enforcement; (3) state or local public fair housing enforcement; (4) lack of public investment in specific areas within the state, including services or amenities; (5) state, regional, or other intergovernmental cooperation; (6) state or local fair housing laws; and (7) siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs; (8) State or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes, and other integrated settings; and (9) unresolved violations of fair housing or civil rights law.

A commenter stated that collecting information on contributing factor requires States to collect information that is not readily available to them, such as information from school districts, county health departments, and public transit agencies.

Another commenter stated that contributing factors definitions in Appendix C are thoughtful and provide clarity as well as actual language that may be incorporated into the analysis. A commenter stated that in using the definitions in Appendix C, a more robust analysis of contributing factors should be required and recommend that rather than matching factors to issues, the State should be required to explain and analyze why a particular factor contributes to the identified fair housing issue.

Other commenters stated that the nature of the contributing factors renders factors outside the authority or feasible control of States; zoning bylaws, ordinances, policies, and decisions will remain critical gateways and potential barriers to housing opportunities in local communities regardless of whether the State is willing to allocate housing tax credits and/or funding. The commenters stated that some contributing factors may be outside the ability of program participants to directly control or influence, so HUD should clarify which methodologies would be acceptable for identifying the significance of these factors, as the tool's instructions require. The commenters stated that if there are no standardized methodologies for determining significance and they are instead subjective classifications, HUD should remove the reference to "significant" as the term applies to specific statistical benchmarks. The commenters also stated that the list of contributing factors throughout the tool provide helpful context and examples for the States, but the complete list is out of scope with a statewide analysis as each area is not applicable or meaningful in every State.

Another commenter suggested that States play an important role in the regulation of land use because State-level laws directly control land use and others set the parameters for effective action, and HUD should expand the list of examples of land use and zoning in its definition of this contributing factor since they are different in kind from the types of regulations that local governments use to control land use. The commenter stated that, for example, States laws could include environmental regulations and coastal preservation laws, and State laws that control parameters including zoning enabling acts and laws that allow for the appeal of zoning decisions that prevent development of affordable housing.

A commenter stated that the Fair Housing Act does not directly prohibit source of income and HUD should not characterize property owners' business decisions as "discrimination" because such characterization ignores the many legitimate reasons property owners choose not to participate in the programs.

A commenter asked whether HUD would accept qualitative bases for a State's assertions with respect to the identification of a particular factor, or must the State provide data to substantiate the claim that the factor is a contributing factor.

Other commenters requested that HUD remove the contributing factors analysis section from the Assessment Tool. The commenters stated that this section would require States to conduct an extraordinary amount of new research to show whether individual contributing factors have a statistically significant impact on specific fair housing issues. The commenters stated that otherwise the determinations will be subjective, leaving the States vulnerable to liability. The commenters further stated that States should not be required to rank contributing factors when setting their goals due to the difficulty of proving causation.

A commenter asked that HUD not add any new contributing factors and only retain those that are within the State's power to address. Another commenter stated that identifying contributing factors goes beyond the skill set of State PHA staff. Another commenter stated that States should be required to consider State tax structures, State education funding, and State transportation funding as part of contributing factors.

HUD Response: HUD thanks the commenters for their feedback. HUD notes that the identification of contributing factors is required by the regulation at 24 CFR 5.154(d)(ii). Fair housing contributing factors are defined at 24 CFR 5.152 as factors that create, contribute to, perpetuate, or increase the severity of one or more fair housing issues. Further, goals in an AFH are designed to overcome the effects of one or more contributing factors and related fair housing issues, as provided in 24 CFR 5.154. Because program participants are required to prioritize contributing factors, giving the highest priority to factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and set goals in accordance with that prioritization, it is possible that not every contributing factor will have a goal associated with it. However, program participants are required to have a goal for each fair housing issue that has significant contributing factors.

HUD will continue to provide guidance and evaluate ways to refine the descriptions of contributing factors, and notes that program participants are free to consider any additional factors that meet the criteria of the definition at 24 CFR 5.152.

HUD has considered the public comments on contributing factors and made certain changes. States, like the other program participants subject to the AFFH rule, are required to identify and prioritize significant contributing factors as part of their AFH. HUD will continue to consider comments relating to the contributing factors, as well as the descriptions of contributing factors as included in the Assessment Tool for public comment.

Regional Analysis

5a. HUD is seeking comment on the best approach for States to conduct an effective fair housing regional analysis addressing the fair housing issues and contributing factors affecting their State. (Region throughout the Assessment Tool in specific questions vs. regional section).

Commenters stated that the ability to access and meaningfully analyze data beyond the State's boundaries is not feasible. The commenters stated that the requirement that States conduct a regional analysis where there are "broader regional patterns or trends affecting multiple States" by analyzing local data and knowledge and consulting the existing analyses of impediments (AIs) and AFH's of neighboring States and jurisdictions is not achievable without additional resources and time.

Other commenters stated that including regional data should be optional for States and States should be able to determine when regional perspectives on specific topics or fair housing issues is appropriate and relevant, and will enhance the AFH. The commenters stated that HUD should not require inter-State analysis as it would require the collection and analysis of information from other jurisdictions that would significantly increase the burden of compliance, and the analysis should only expand outside the jurisdiction when applicable. Another commenter stated that if the purpose is to assess issues in neighboring States alone, that is fine, but if the purpose is to change policy in other State, that this will be problematic. A commenter stated that this analysis is more appropriate at the local level or possibly at the MSA level that share a local policy-making body or mechanism.

Commenters stated that the currently proposed format that incorporates regional analysis throughout the sections is preferable to a regional section. The commenters stated that actual placement of the questions currently is not problematic; however, only Statewide and sub-state analysis should be required when data are provided.

A commenter stated that the AFFH regulation provides for voluntary collaboration among program participants so in this way, a State and one or more entitlement jurisdictions could formally coordinate data, analysis, and goals in a collaborative effort.

HUD Response: HUD appreciates the views and recommendations of these commenters and has clarified where a regional analysis is required in the Assessment Tool. As stated above, a regional analysis that extends beyond the State is required by the AFFH regulation and is a crucial part of an analysis of fair housing issues. A regional analysis is important because fair housing issues are often not confined to jurisdictional, geographic, or political boundaries.

5b. HUD seeks comment on whether the proposed format appropriately provides for Insular Areas to describe regional fair housing impacts without imposing undue burden. HUD welcomes recommendations for specific questions tailored to capture regional fair housing analysis for Insular Areas while not imposing unnecessary burdens in view of the unique characteristics of Insular Areas.

No comments were received in response to this question.

Data

6a. Due to limitations of the Jobs Proximity Index at the State level, HUD is seeking comment on providing additional types of data (e.g., by education level, sector of the economy, race/ethnicity, numbers of jobs by location) that might be most useful for States in conducting an appropriate fair housing analysis in connection with disparities in access to employment opportunities.

A commenter stated that HUD-provided data is generally limited to certain federal housing programs and census data and does not address other sources of data relating to education, transportation, jobs, and environmental health. Other commenters stated States cannot determine the labor market index and other information would be of assistance, which would include basic statistical facts, sample size, margin of error, level of significance, standard deviation and other guidance in understanding the meaning and limits of the indices provided.

Other commenters stated that each of the opportunity indicators would require a tremendous amount of work to analyze, and the commenters asked what constitutes an area of opportunity.

Another commenter stated that its contracted consultants examined the indices and the only index that was considered applicable at the state level was the School Proficiency Index.

Other commenters recommended that HUD either provide its own complete data on disparities in access to opportunity to States that can be used in the development of the AFH, significantly change its expectations on the extent of analysis of the basic opportunity areas, or delete this requirement. The commenters stated that if HUD is going to require the analysis of school assignment policies, criminal justice diversion and post incarceration reentry services, it must provide data related to these areas. The commenters stated that, at the very least, HUD should be providing data on direct housing issues, such as foreclosures and evictions.

Commenters asked that HUD consider using ACS commute time and section and income by location for evaluating employment opportunities. The commenters stated that in many rural areas, the number of jobs in the immediate market area is not a clear indication of economic opportunity as residents travel long distances to work. The commenters stated that ACS data includes data on commute time that may be useful in describing the economic opportunities available. The commenters also stated that HUD should not be using the untested Jobs Proximity Index for non-entitlement jurisdictions—measuring the location of jobs is not appropriate in rural areas or small cities.

HUD Response: HUD appreciates the views and recommendations of the commenters. HUD will continue to evaluate how it can improve its provision of data with respect to disparities in access to opportunity, but at this time is making no changes to the opportunity data it is providing. HUD notes that where program participants have local data that meet the criteria set forth at 24 CFR 5.152 and the instructions to the Assessment Tool they must use such data. Local data and local knowledge, including information obtained through the community participation process, may be particularly useful in assessing disparities in access to opportunity.

6b. What data are available to States and Insular Areas, including data at the local level, that would be relevant and most helpful to States and Insular Areas in conducting their respective analyses of fair housing issues and contributing factors in their jurisdiction and region?

Commenters stated that States should have flexibility to determine when including fine-scale local data is appropriate. The commenters stated that the State's assessment will result in aggregated county data that will not identify the neighborhood disparities that exist in smaller communities. Another commenter stated that since counties encompass various types of smaller jurisdictions, such as cities, villages, and unincorporated rural areas, it will be difficult for a State to evaluate how different sets of sub-county data influence the overall county data value, and a single small city can strongly influence the data value for a county and thereby misrepresent the non-urban portion of the county. Other commenters sated that States should be allowed to use their own data to complete the tool and HUD data should be optional since state data may be more representative of the State's true characteristics.

Several commenters stated that HUD should require States to seek out and use sub-State data and knowledge relating to individuals with disabilities. The commenters stated that States should also be required to use national data available on persons with disabilities experiencing homelessness form HUD's Homeless Management Information System, and data from the Money Follows the Person program available from the Center for Medicare and Medicaid Services. The commenters stated that HUD should also include data on persons with disabilities living in nursing facilities and intermediate care facilities for individuals with developmental disabilities (available from CMS). The commenters further stated that States should be required to gather information on individuals with disabilities, consult with disability rights/advocacy organizations, Centers for Independent Living, Qualified Fair Housing Organizations, local HUD offices, local Fair Housing Assistance Program (FHAP) offices, and other relevant government and non-profit organizations.

Commenters stated that the State would need to request data from a large number of agencies, which would be a lengthy, difficult process. The commenters stated that the State would not want to apply the data in a manner that creates conflict between the AFH and other planning processes for which the agencies originally collected the data. The commenters stated that not all data collected by other agencies may be easily included at the regional level, and that some data would be included by reference to existing reports or plans rather than analyzed as raw data.

A commenter stated that the State has data relating to employment, poverty, and disadvantaged communities at the county level, but that the State lacks data for urban and rural areas. The commenter stated that the State does not have data relating to emergency preparedness, public safety, and prisoner reentry, as this data is not available for State housing agencies. The commenter stated that to obtain would require cooperation of many state agencies.

HUD Response: HUD thanks the commenters for these recommendations. HUD notes that where program participants have local data that is more current or accurate than the HUD-provided data and wish to use that data instead of relying on the HUD-provided data, program participants may use such data and explain why it is more useful than the HUD-provided data. Additionally, HUD notes that program participants need only use local data and local knowledge when they meet the criteria set forth at 24 CFR 5.152 and the instructions to the Assessment Tool.

HUD has also included in the instructions to the Assessment Tool some of the examples of sources of local data provided by commenters, such as Federally-funded independent living centers, among others, that might be useful to program participants when conducted an AFH.

6c. Data Comments Generally.

Commenters stated that the maps are very vague and unclear as to what information they are trying to convey, and the directions on how to use the information is confusing and hard to navigate. The commenters stated that the data and maps are not useful as presented. The commenters stated that HUD should ensure that the Data and Mapping Tool has incorporated the data and maps for States before the subsequent re-issuance of the Draft State Tool for the upcoming 30-day comment period. The commenters stated that, without access to that tool, only the following recommendations respecting data can be made: Ensure that counties and R/ECAPs are clearly labeled on the maps; provide the same level of detail for Housing Credit- and USDA-financed housing as provided for HUD-financed housing; ensure that demographic data can be interpreted at the county level; provide CBSA and county level data. The commenters stated that the data and mapping tool should include the ability to select and overlay layers (comparing multiple maps) and should provide county and CBSA data tables. The commenters stated that without an active tool with which to engage, any assessment cannot be fully complete, and the commenters stated the they therefore cannot and do not know what technical issues will arise. The commenters stated that they would like to avoid having to upload multiple attachments into the system.

Commenters stated that collecting the data required to provide meaningful explanations would be extremely challenging at best and although States are not required to collect primary data they are uncertain of how to compile the information for the assessment without doing so. The commenters stated that while the notice says States are not required to collect primary data, it is unclear how States will otherwise acquire local data besides administrative data sources. The commenters further stated that even though collecting primary data is not required, it would require time consuming and costly surveys to amass the other primary qualitative data to conduct analyses in areas such as education.

The commenters stated that HUD supplied data should only include non-entitlement data to auto-populate the tool, because if State grantees operating on "balance of State" programs have to draw conclusions for non-entitlement rural and suburban areas based on data that includes entitlement jurisdictions not eligible for State programs, the assessment will be inaccurate for this area and conclusions could be incorrect.

Several commenters stated that HUD provided data should include a margin of error so that States can see if the information is statistically valid; if it is not valid, States should be able to use other resources. The commenters stated that inaccurate data could result in fair housing complaints against the State in which States would have to expend considerable public resources to present more accurate data in its defense. The commenters stated that by the time the commenter's AFH is due, the information in the 2010 Decennial Census will be almost 10 years old, calling into question the validity, adequacy, and accuracy of the data as a basis of analysis and heightening the need to rely on local data, increasing the burden on States; the American Community Survey (ACS) also has high margins of error.

A commenter stated that HUD must ensure that the data it provides is accurate, meaningful, and user-friendly. Another commenter stated that the ACS data contains margins of error that increase conversely with sample size, making the data difficult if not impossible to rely on for smaller states. The commenters expressed concern about HUD-provided data's completeness and statistical relevance. The commenter stated that the tool utilizes shape files in the mapping portion, so HUD should publicly share those to allow for GIS data integration with participating jurisdictions.

Several commenters stated that while the AFFH final rule defines "local data" and "local knowledge" as readily available information that requires little to no cost to obtain, the rule also notes that local data may be more relevant and current than HUD-provided data and requires program participants to supplement HUD-provided data with local data when it is relevant and easily obtainable. The commenters stated that this creates an expectation of analysis, instead of an allowance of, local data without considering the enormity of data that is available to States through a reasonable amount of searching the Internet alone. Commenters stated that jurisdictions with strong affordable housing and academic research communities that provide a wealth of information at little to no cost are penalized because they have a higher burden of reviewing and analyzing locally available data since more high quality data is available.

Commenters stated that absent dedicated funding from HUD, a State is unlikely to be able to analyze and properly present local data in a matter consistent and relatable with other components of the tool, nor can State housing agencies adequately compile and analyze local data that is available at little to no cost with respect to the non-housing elements that the tool instructs States to analyze. Commenters stated that without HUD provided guidance to its grantees and the public regarding the extent to which local data must inform conclusions and be displayed within the AFH, States are vulnerable to complaints even where HUD considers a State to have met its burden; oral comments from HUD staff are not sufficient and States will expend more resources defending complaints, as will HUD in processing such complaints.

A commenter stated that counties do not represent regions in Massachusetts, and HUD should provide user-friendly data that allows States to disaggregate and aggregate at levels other than the "subs-state areas" identified in the explanation maps and tools published with the tool.

Other commenters stated that all data should be available through tables instead of only time-intensive zooming on maps. A commenter stated that the Table 10–1, entitled "R/ECAP and Non-R/ECAP Demographics by Publicly Supported Housing Program Category," is unclear as currently presented and it seems that there is likely crossover among the categories as presented. The commenter stated that for the sake of clarity, each protected category should be included as a separate, distinct table.

Another commenter requests that HUD provide underlying data for maps and tables, such as actual figures behind R/ECAPS and ECPAs, in a user-friendly format so that States can refine their analysis as needed without incurring undue consulting costs.

Commenters stated that HUD should grant States the flexibility to use HUD-provided county data, tract level data, or locally supplied data as appropriate. A commenter stated that, for example, educational access is not a meaningful indicator at the county level, and while the local level (tract based) is more appropriate, the State would utilize data directly from its department of education.

Other commenters stated that baseline demographics data provided at the State, county, and user identified sub-State area will be valuable in capturing trends for protected class populations. Another commenter stated that the sample maps relating to certain demographic information such as race, limited English proficiency (LEP) populations, persons with disabilities, and poverty seem to be straightforward and commenter should be able to easily utilize these maps to answer basic questions in the AFH Tool.

Several commenters stated that it is imperative to be able to group counties or areas into sub-States because participating jurisdictions are at both the county and municipality level, so the sub-State regions must be able to be created by groups of counties that exclude specific municipalities. The commenters stated that these sub-State areas should be able to be saved so States do not have to create them each time does it does analysis.

Another commenter stated that sub-State areas should be required rather than optional, and another commenter suggests that if sub-State areas are not used, the State or Insular area should have to explain why it is unnecessary. The commenter stated that the tool's prompt that States and Insular Areas explain the rationale for their selection of sub-State areas should not be a disincentive for the creation of such areas. The commenter stated that the instructions should be expanded upon to provide criteria for the selection of sub-State areas, including but not limited to the contours of regional housing markets and common demographic, economic, and housing characteristics across contiguous rural markets. Another commenter requested that the data and mapping tool have the capability to group data based on the selection of numerous counties to build sub-State areas. A commenter suggested that breaking down a State into sub-State areas may be necessary to conduct a meaningful analysis even in small States because housing markets are not organized along state lines, and the demographics in regions within States may vary considerably thus complicating any analysis of segregation and integration based on HUD's definitions.

A commenter stated that the dissimilarity index and opportunity indicators are not applicable to analyses at the county or State level since these metrics are locally based and indexed against a national average. The commenter stated that indices should either be flexible to benchmark against a State average or the data should be made available in raw form for States to evaluate.

Commenters stated that evaluating R/ECAP at the State level is not applicable as not all R/ECAPs are in similar markets or have similar circumstances, and that, if such an analysis is required, States should be able to remove tribal census tracts from the evaluation.

Commenters stated that dot density maps are more applicable to census tract level as they are smaller geographies with standardized population totals, and therefore dot-matrix maps are of limited use for States.

Several commenters stated that in the past, data provided by HUD has been error prone and the commenter stated that HUD must take steps to address quality issues. The commenters stated that States should have the authority to use locally produced data as necessary to ensure quality and consistency, and that for LIHTC, HUD should reference data submitted to the agency by State housing finance agencies pursuant to HERA requirements. The commenters stated to the extent that HFAs retain similar occupancy data at the development level, States should use this information if it readily available in circumstances where more granular analysis of LIHTC is appropriate. The commenters stated that HFAs have reported that they have serious concerns about the reliability of Placed in Service (PIS) data, and HFAs are unable to remove properties that are no longer active LIHTC properties from the PIS database.

A commenter stated that it would like to evaluate how the PIS database actually works in the mapping tool. Another commenter stated that States should not be required to look at data dating back to 1990 because of the fluidity of data and there needs to be more flexibility that streamlines the historic look back of data. The commenter further stated that the data is already outdated generally because conditions on the ground are constantly changing. The commenter stated that a longitudinal analysis of demographic patterns is not a productive use of time and resources.

Commenters stated that the tool requires States to comment, correlate data, and make specific findings regarding the impact that policies of other State agencies have on fair housing issues. The commenters stated that these policies include education, jobs, and transportation, and these policies are driven locally by the needs of communities.

A commenter stated the limits of HUD provided and local data will make meaningful analysis difficult at best, instead, States will just be restating the obvious—that in more urban areas there are both some race and poverty concentrations.

A commenter stated that the School Attendance Boundary Information System, on which the school proficiency index is based, has not been funded and the project has ended so no future data releases are planned. Another commenter urged HUD to reinstitute funding to School Attendance Boundary Information System (SABINS) or use a comparable ongoing service to ensure data reliability. A commenter stated that HUD should provide all disability data by age group.

Another commenter stated that States do not necessarily have agreements or ongoing arrangements with most of the likely sources for local data. The commenter stated that even large States do not have the capacity to collect, analyze, store, and report it. The commenter stated that it is also unclear how States will be able to collect "primary data" beyond the administrative "secondary data." The commenter also stated that it is assumed that surveys, input sessions, consultation, and other methods are all primary qualitative data, which would be very expensive to conduct.

Commenters stated that States have raised concerns about the accuracy and integrity of PIC data, and, stated that due to HUD's lack of transparency concerning this data, those concerns remain unresolved. HUD should provide states access to the raw datasets.

A commenter stated that the segregation analysis should not rely solely on the dissimilarity index and HUD should include the "exposure index" and the "race and income" index. The commenter stated that these indices are necessary to provide a complete picture of segregation within an area, and that using the dissimilarity index alone can present a distorted picture of segregation.

Another commenter stated that the mapping of R/ECAPs does not align with the 2013 Chicago Region Fair Housing and Equity Assessment, and that the data used for that assessment, there are R/ECAPs that do not appear in the AFH mapping.

A commenter stated that the HUD provided data is unwieldy and hard to understand. The commenter stated that the level of sophistication required is at odds with the emphasis on public participation. The commenter stated that HUD should remember that employees of PHAs, especially QPHAs, will have to stretch their work-related skill set in a new way to complete an AFH. A commenter stated that the map legend with varying shades of grey that are close in color are difficult to cross reference. The commenter stated that maps would be easier to read if there was more variance in the color by use of multiple colors.

HUD Response: HUD appreciates and understands the commenters' concerns about not being able to test the AFFH Data and Mapping Tool with respect to State-level data. For that reason, as stated above, HUD has announced that there will be a second 30-day comment period relating to the data in and functionality of the AFFH–T for States and Insular Areas. The public will have an additional chance to provide HUD with feedback.

As previously stated, HUD only requires that program participants use local data and local knowledge when they meet the criteria set forth at 24 CFR 5.152 and in the instructions to the Assessment Tool. Additionally, as noted above, HUD requires that States conduct a fair housing analysis of the entire State, but States may rely on the AFH of local governments. As stated above, States are accountable for compliance with the regulatory requirements for their AFHs. States should ensure that they agree with any other analysis used. Also noted above, States will have flexibility to zoom in or out of various scales of geography when conducting their analysis, but the data provided will be focused at the county level.

HUD will continue to evaluate the suggestions made by commenters with respect to the HUD-provided data, and will continue to provide guidance and technical assistance to program participants as they use the HUD-provided data to conduct an AFH.

State or Insular Area Collaboration With Qualified PHAs (QPHAs)

7a. Do other program participant contemplate collaborating with a State or Insular Area on an AFH? Do States and/or Insular Areas and QPHAs anticipate collaborating on a joint AFH? If not, are there ways HUD could better facilitate collaborations between States and QPHAs?

A commenter stated that States would be a natural partner for the QPHA and it would be mutually beneficial. However, several commenters stated that the amount of coordination for collaboration presents serious challenges. The commenters stated that States should be required to take the lead in the process, contact and work with the QPHA since the State has the most experience in producing these types of plans. The commenters stated that the responsibilities of each need to be clearly stated as well as the timeline for required work to be started, public hearing requirements, deadlines for submission, etc. The commenters stated that significant State grantee resources including staff, technical assistance, expense, and time would be required to facilitate collaboration with small PHAs, and States do not have authority or management responsibilities relating to PHAs. The commenters stated that to successfully collaborate, better guidance and interpretation from HUD is needed on how to coordinate timing with multiple PHAs on different cycles. The commenters stated that this would be an enormous burden with respect to time, coordination, and monetary costs.

Another commenter states that while it provides QPHAs with data and some analysis if they request it, conducting an AFH with specific analysis for QPHAs would be an unreasonable administrative burden. The commenter stated that a State is concerned that it would not only be taking on the work, but the potential liability of any perceived faulty conclusions were made. The commenter further stated that conclusions made at the State level are not necessarily going to be consistent with the conclusions at the localized QPHA level, causing confusion.

A commenter expressed appreciation for the provisions for the State to include the PHAs under its consolidated planning authority, but stated that because of the distance and differences among PHAs the results of the analysis will be less than desirable.

Several commenters identified individual States that would not be collaborating with QPHAs on a joint AFH because the State does not have an ongoing funding relationship with the QPHAs in the state, nor is the State involved in their operation or administration. The commenters stated that the State will consult with the PHAs that certify consistency with the State's plan, but not collaborate. The commenters stated that collaboration with QPHAs would impose substantial costs on states because they would inevitably serve as the lead entity and would therefore have to contribute significant resources on the collaboration on top of conducting its own AFH analysis; in some cases, the QPHA would lack the capacity to undertake the analysis or gather local data and the State would have to do it for the QPHA. Virginia has approximately 15–20 qualified PHAs and the State does not have an ongoing relationship with the housing authorities. Significant State resources, including staff, technical assistance, and time would be required to facilitate these collaborations. In Delaware, both PHAs meeting the criteria for QPHAs have ongoing relationships with entitlement jurisdictions and collaboration between these two entities would be more appropriate, as the State has little contact with either PHA. Another commenter adds that this would be redundant since PHAs have to conduct their own AFH. It is impracticable to expect States and QPHAs to collaborate on a joint AFH.

A commenter stated that including small PHAs in a State grantee AFH should be strictly optional. Other commenters stated that the tool does not make clear that collaboration with QPHAs is optional. HUD should ensure the tool makes clear that States are only required to answer questions related to QPHAs if they enter into partnerships with those entities.

Another commenter asked whether a State that is also a PHA be included as QPHA regardless of voucher volume and be able to be collaboratively included in the State tool if the state desires.

A commenter stated that it has 328 QPHAs, and even if one-third wish to collaborate, as HUD estimates, there does not seem to be a decrease in the analysis required for QPHAs, only additional burden for the State to provide data and research to these entities. The commenter stated that there is no incentive to collaborate unless the QPHAs are bound to allocate some portion of their units based on the State-wide goals.

Another commenter stated that the State is interested in exploring the possibility of collaborating with some or all of its QPHAs, but it is unclear of the implications for the level of analysis when collaborating with QPHAs. The commenter stated that the State is concerned it will be required to examine local fair housing issues for the QPHA's jurisdiction at a level that is not consistent with state-level program administration.

A commenter stated that QPHAs do not intend to collaborate with States, that QPHAs are concerned about establishing relationships with the States, even if States were to conduct the necessary regional analysis for QPHAs. The commenter stated that QPHAs are concerned about the extent to which States will even want to collaborate with them. The commenter stated that States expressed this hesitation, and that coordination will be difficult and QPHAs have concerns about states' abilities to conduct the AFH.

HUD Response: HUD appreciates the feedback it received from commenters on whether States and QPHAs anticipate collaborating on a joint or regional AFH. HUD will continue to provide the QPHA insert for use by QPHAs in order to facilitate joint collaborations.

7b. How can the State and Insular Area Assessment Tool facilitate collaboration with QPHAs and strive to ensure the State's or Insular Area's analysis of the entire State or Insular Area provides a sufficiently detailed analysis to inform the QPHA's fair housing analysis and goal setting?

Commenters stated that financial resources to make collaboration feasible, programmatic incentives, such as a streamlined AFH for States that collaborate with QPHAs would be beneficial. The commenters stated that adequate data must be provided both at and beneath the county level (a real challenge in rural areas), and that without this data, the QPHA context cannot be feasibly addressed.

A commenter asked HUD to consider offering funds to interested States willing to pilot the concept of State/QPHA collaboration.

Another commenter suggested that HUD streamline questions asked of States making it easier for both states and QPHAs to finish their respective sections of the AFH tool in a timely manner. The commenter stated that HUD should require that States provide all due assistance to QPHAs that may need it to complete their AFHs.

A commenter stated that since the State Assessment Tool maps and data are at the State level, it would not be feasible or appropriate to require the type of granular analysis individual PHAs would need in order to inform their own fair housing analysis and goal setting.

Another commenter stated that coordination with PHAs would not be an efficient use of government resources as it would duplicate HUD efforts in reviewing PHA AFHs and enforcing PHA obligations to affirmatively further fair housing. The commenter stated that under the final rule, PHAs that jointly participate with other PHAs in the creation of AFH must seek certification of consistency with the consolidated plan of either the local government or State governmental agency in which the PHA is located, which will burden the States by requiring them to review and evaluate large numbers of jointly prepared AFHs on the local level.

HUD Response: HUD appreciates the recommendations of the commenters. HUD notes that collaboration can result in a reduction of burden and cost savings for the program participants involved, and provide for a more robust fair housing analysis and regional solutions to fair housing issues. HUD also notes that the AFFH Data and Mapping Tool is expected to allow for different types of program participants to access the data at various levels of geography appropriate to their required level of analysis. Finally, HUD reminds program participants and the public that collaboration is entirely voluntary and the program participants may divide work as they choose should they enter into a collaboration to conduct and submit a joint or regional AFH.

In response to the numerous comments received on the topic of joint collaborations, including with QPHAs, HUD has made a number of changes to this Assessment Tool, as well as the Assessment Tool for Local Governments and the Assessment Tool for PHAs. HUD has also made the commitment to issue a fourth Assessment Tool for use by QPHAs, including for joint collaborations between QPHAs.

7c. Given that HUD currently intends to focus States on thematic maps at the county or statistically equivalent level, how can the Assessment Tool facilitate collaboration with QPHAs by ensuring the State's analysis of the entire State provides sufficiently detailed analysis to inform the QPHA's fair housing analysis and goal setting?

A commenter stated that this sort of collaboration is unrealistic. The commenter stated that to facilitate collaboration with QPHAs by ensuring the State analysis of the entire State is detailed enough, HUD would have to provide all data for the QPHA's service area, as well as the county in which the QPHA is located.

HUD Response: HUD appreciates the feedback from this commenter and notes that the AFFH Data and Mapping Tool is expected to have added functionality, which will allow program participants to access the data at various levels of geography. HUD believes this functionality will further facilitate collaborations between States and program participants at lower levels of geography. It is HUD's intention to provide data for QPHAs that is relevant to the QPHA's required analysis. Note that a complete State analysis is expected to fulfill the required regional analysis for a QPHA.

7d. Is the organizational structure the most efficient and useful means of conducting the analysis or whether these questions should be inserted into the respective sections of the Assessment Tool to which they apply?

A commenter stated that if States and QPHAs decide to collaborate, then a separate section seems appropriate. Another commenter expressed its support for the organizational structure of the assessment tool with respect to QPHAs. The commenter stated that the part of analysis that QPHAs are responsible for should be kept separate from the other sections of the assessment tool.

HUD Response: HUD appreciates these commenters' feedback and has retained the QPHA insert as a separate section of the Assessment Tool. In the Assessment Tool, HUD has noted that the Small Program Participant Insert is only to be completed when either: (1) A local government that received a CDBG grant of $500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH collaborates with a local government that received a CDBG grant larger than $500,000 in the most recent fiscal year prior to the due date for the joint or region AFH; or (2) A HOME consortia whose members collectively received less than $500,000 in CDBG funds or received no CDBG funding partners with a local government that received a CDBG grant larger than $500,000 in the most recent fiscal year prior to the due date for the joint or region AFH.

For small program participants in the same CBSA as the lead State, the analysis is intended to meet the requirements of jurisdictional analysis while relying on the lead State to complete the regional analysis. For small program participants whose service area extends beyond, or is outside of, the lead State's CBSA, the analysis must cover the small program participant's jurisdiction and region. Small program participants should refer to the Contributing Factors listed in each section above and will have to identify Contributing Factors. Small program participants must also identify any individual goals.]

Insular Areas

HUD received no comments in response to the following questions:

8a. How can HUD assist insular areas to complete an AFH in terms of providing data, or where data is lacking, are there areas where HUD can provide *further assistance or guidance for insular areas?*

No comments were received in response to this question.

8b. To what extent will insular areas be able to use the Assessment Tool to analyze fair housing issues and contributing factors and set goals and priorities without HUD-provided data?

No comments were received in response to this question.

8c. Are there ways in which HUD could adapt the Assessment Tool for insular areas? To what extent do insular areas have access to local data and/or local knowledge, including information that can be obtained through community participation, that could help identify areas of segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs where the HUD-provided data may be unavailable?

No comments were received in response to this question.

Small Entities That Collaborate With States

9a. Will collaboration with a State in conducting an AFH using the Assessment Tool reduce the burden that a small entity such as a QPHA would otherwise have in conducting an individual AFH?

Commenters stated that PHAs have no staff hours to contribute to this undertaking. Other commenters stated that QPHAs that do not serve metropolitan areas should be exempt from the requirement. The commenters stated that since the goal of including small PHAs into a State grantee AFH is to remove AFH responsibility for small PHAs, a reasonable solution is to waive the AFH requirement for small PHAs altogether.

Other commenters stated that HUD does not appear to be making a significant reduction in administrative burden. A commenter stated that in its State, in addition to the 328 QPHAs in the State, there are 79 entitlement communities, of which 38 received less than $1 million in CPD funds for FY 2015. The commenter stated any reduction in burden for the QPHA is not actually a reduction in burden, but a shifting of burden to the State.

HUD Response: HUD appreciates the suggestions from these commenters and will continue to evaluate how HUD can reduce burden for small entities and States that wish to collaborate. HUD has also developed an insert for local governments that received $500,000 or less in CDBG in the most recent fiscal year prior to the AFH submission to help allow for collaboration with a State should they choose to collaborate. HUD notes that it will create another assessment tool, specifically designed for use by QPHAs. The streamlined set of questions for smaller consolidated planning agencies will help facilitate joint partnerships with state agencies using this assessment tool.

9b. To what extent do small entities, such as QPHAs, expect to rely on outside resources such as a consultant in conducting a collaborative AFH with a State?

HUD received no comments to this question.

PHA-Specific Comments

HUD received the following PHA-specific comments.

A commenter stated that PHAs lack control over school policies, access to employment opportunities, access to transportation, or services for or distribution of persons with disabilities.

Another commenter stated that PHA jurisdictional data should be gathered from Census data and information HUD has from PIC. The commenter stated that PHAs do not have access to information about most facilities except what they own and manage.

Another commenter stated that, as a rural PHA serving 15,000 square miles, with communities that do not have any concentrations of a particular class, or race, or household type, the AFH will not affirmatively further fair housing. The commenter stated that it has vouchers in apartment buildings, trailer houses, and single-family homes scattered throughout these communities. The commenter stated that efforts should continue to be used on convincing landlords and property managers to work with our program to make units available to voucher holders. The commenter stated that a PHA mostly serves the elderly and persons with disabilities who appreciate the quality of life offered by small towns.

Another commenter stated that it appears HUD is expecting PHAs to be versed in areas outside the public housing arena, such as demographic trends, laws, policies and practices involving other programs, and asked how is a PHA supposed to know about school enrollment policies?

A commenter stated that in the "Fair Housing Analysis of Rental Housing" section, HUD will need to list the specific protected classes envisioned for analysis here. The commenter stated that there are certain protected classes with optional self-identification such as race, but other protected classes, such as religion, disability, and national origin may not be collected by PHAs. The commenter stated that it is important that residents feel secure and that PHAs do not unintentionally create requirements that perpetuate discriminatory practices.

Another commenter asked whether State PHAs are supposed to complete the QPHA questions, and that, if so, HUD must describe in greater detail the expectations for State PHAs. The commenter stated that if this is required, the work necessary to complete the QPHA questions will require a contractor, and the commenter stated that its State has over 100 QPHAs, so this would be burdensome.

Another commenter stated that since the tool does not take resources into account, PHAs are forced to prioritize fair housing activities, and consequently the tool ignores real-world constraints under which these entities operate.

HUD Response: HUD appreciates these comments relating to PHAs. HUD will continue to evaluate the scope of the analysis required of PHAs, including how PHAs serving rural areas can conduct a meaningful fair housing analysis. HUD also appreciates the comment relating to the inclusion of protected class with respect to the Fair Housing Analysis of Rental Housing. HUD is continuing to evaluate this recommendation. Finally, HUD notes that the QPHA insert is intended for use only by PHAs that are QPHAs. State PHAs may only use this insert if they are conducting a joint or regional AFH with the State and are QPHAs.

V. Overview of Information Collection

Under the PRA, HUD is required to report the following:

Title of Proposal: State and Insular Area Assessment Tool.

OMB Control Number, if applicable: N/A.

Description of the need for the information and proposed use: The purpose of HUD's Affirmatively Furthering Fair Housing (AFFH) final rule is to provide HUD program participants with a more effective approach to fair housing planning so that they are better able to meet their statutory duty to affirmatively further fair housing. In this regard, the final rule requires HUD program participants to conduct and submit an AFH. In the AFH, program participants must identify and evaluate fair housing issues, and factors significantly contributing to fair housing issues (contributing factors) in the program participant's jurisdiction and region.

The State and Insular Area Assessment Tool is the standardized document designed to aid State and Insular Area program participants in conducting the required assessment of fair housing issues and contributing factors and priority and goal setting. The assessment tool asks a series of questions that program participants must respond to in carrying out an assessment of fair housing issues and contributing factors, and setting meaningful fair housing goals and priorities to overcome them.

Agency form numbers, if applicable: Not applicable.

Members of affected public: States and Insular Areas. These include the 50 States, the Commonwealth of Puerto Rico, and 4 Insular Areas (American Samoa, the Territory of Guam, the Commonwealth of the Northern Marianas Islands and the U.S. Virgin Islands). In addition, PHAs and local governments that will be able to choose to collaborate with a State or Insular area, where the State or Insular area is the lead entity.

VI. Estimation of the Total Numbers of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response

The public reporting burden for the proposed State and Insular Area Assessment Tool is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The estimate of burden hours is an average within a range, with some AFHs requiring either more or less time and effort based on the size and complexity of the relevant program participant's assessment. Smaller program participants will have less total burden both in terms of staff hours and costs. A separate estimate for Insular Areas is included, at 240 hours per Insular Area program participant, which is the same level of burden that HUD estimated for the Local Government Assessment Tool.

This estimate assumes that approximately one-third of the 3,942 PHAs may seek to enter into joint AFHs with their relevant State program participant. This is consistent with the burden estimate included in the 30-Day PRA Notice for the Local Government Assessment Tool. The 120 hours per PHA is also consistent with the previous estimate; however, this may be an over-estimate given that numerous smaller sized PHAs may be more likely to enter into joint assessments with State program participants.

This burden estimate assumes there would be cost savings for PHAs that opt to partner with a State agency. For instance, the proposed State and Insular Area Tool includes a distinct set of questions that would be required for Qualified PHAs (*i.e.* those with 550 or fewer public housing units and/or Housing Choice Vouchers). Qualified PHAs would also benefit from having the State agency's analysis fulfill the regional portion of the PHA's assessments. While there may be some cost savings for Qualified PHAs opting to participate in joint submissions using the proposed State and Insular Assessment Tool, they are still assumed to have some fixed costs, including those relating to staff training and conducting community participation, but reduced costs for conducting the analysis in the assessment tool itself.

While local government program participants may also choose to partner with State agencies, the burden estimate for the Assessment Tool designed for their use included a total estimate for all of the 1,192 local government agencies.

All HUD program participants are greatly encouraged to conduct joint AFHs and to consider regional cooperation. More coordination in the initial years between State and local government program participants one the one hand and PHAs on the other will reduce total costs for both types of program participants in later years. In addition, combining and coordinating some elements of the Consolidated Plan and the PHA Plan will reduce total costs for both types of program participants. Completing an AFH in earlier years will also help reduce costs later, for instance by incorporating the completed analysis into later planning documents, such as the PHA plan, will help to better inform planning and goal setting decisions ahead of time.

Information on the estimated public reporting burden is provided in the following table:

	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated total burden (in hours)
States *	51	1	Once every five years	1,500	76,500
Insular Areas **	4	1	Once every five years	240	960
Public Housing Agencies	665	1	Once every five years	120	79,800
Total Burden					157,260

The estimates represent the average level of burden for these grantee types. It should be noted that this staff cost is not an annual cost, but is incurred every five years.

* The term 'State' includes the 50 States as well as Puerto Rico. See 42 U.S.C. 5302(2) & 42 U.S.C. 12704(2); The District of Columbia, as a CDBG formula entitlement entity will use the assessment tool developed for local government agencies.

** The term "Insular Area" includes Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa." See 42 U.S.C. 5302(24) & 42 U.S.C. 12704(24).

Explanation of the Change in Burden Estimate

The total burden estimate of 157,260 hours is a reduction from the previous estimate of 235,140 hours. This change is solely attributable to the revision of the estimated number of potential public housing agency joint partners that will use the assessment tool for States and Insular Areas. While HUD has also revised the State assessment tool to add a new streamlined assessment tool for smaller consolidated planning agencies, the estimated burden for these agencies is still included in the overall burden estimate for the local government assessment tool. The estimates for public housing agency participation are discussed in more detail here.

HUD is including the following information in the 30-Day PRA Notices for all three of the assessment tools that are currently undergoing public notice and comment. The information is intended to facilitate public review of HUD's burden estimates.

HUD is revising its burden estimates for PHAs, including how many agencies will join with other entities (*i.e.* with State agencies, local governments, or with other PHAs), from the initial estimates included in the 60-Day PRA Notices for the three assessment tools. These revisions are based on several key changes and considerations:

(1) HUD has added new option for QPHAs, to match the approach already presented in the State Assessment Tool as issued for the 60-Day PRA Notice, to facilitate joint partnerships with Local Governments or other PHAs using a streamlined "insert" assessment. Using this option, it is expected that the analysis of the QPHA's region would be met by the overall AFH submission, provided the QPHA's service area is within the jurisdictional and regional scope of the local government's Assessment of Fair Housing, with the QPHA responsible for answering the specific questions for its own programs and service area included in the insert.

(2) HUD's commitment to issuing a separate assessment tool specifically for QPHAs that will be issued using a separate public notice and comment Paperwork Reduction Act process. This QPHA assessment tool would be available as an option for these agencies to submit an AFH rather than using one of the other assessment tools. HUD assumes that many QPHAs would take advantage of this option, particularly those QPHAs that may not be able to enter into a joint or regional collaboration with another partner. HUD is committing to working with QPHAs in the implementation of the AFFH Rule. This additional assessment tool to be developed by HUD with public input will be for use by QPHAs opting to submit an AFH on their own or with other QPHAs in a joint collaboration.

(3) Public feedback received on all three assessment tools combined with refinements to the HUD burden estimate.

Based on these considerations, HUD has refined the estimate of PHAs that would be likely to enter into joint collaborations with potential lead entities. In general, PHAs are estimated to be most likely to partner with a local government, next most likely to join with another PHA and least likely to join with a State agency.

While all PHAs, regardless of size or location are able and encouraged to join with State agencies, for purposes of estimating burden hours, the PHAs that are assumed to be most likely to partner with States are QPHAs that are located outside of CBSAs.

Under these assumptions, approximately one-third of QPHAs are estimated to use the QHPA template that will be developed by HUD specifically for their use (as lead entities and/or as joint participants), and approximately two-thirds are estimated to enter into joint partnerships using one of the QPHA streamlined assessment "inserts" available under the three existing tools. These estimates are outlined in the following table:

Overview of Estimated PHA Lead Entities and Joint Participant Collaborations

	QPHA outside CBSA	QPHA inside CBSA	PHA (non-Q)	Total
PHA Assessment Tool:				
(PHA acting as lead entity)	x	x	814	814
joint partner using PHA template	x	300	100	400
Local Government Assessment Tool (# of PHA joint collaborations)	x	900	200	1,100
State Assessment Tool (# of PHA joint collaborations)	665	x	x	665
subtotal	665	1,200	1,114	
QPHA template	358	605		963
Total	1,023	1,805		3,942

Notes: "x" denotes either zero or not applicable.

Solicitation of Comment Required by the PRA

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Whether additional or different contributing factors should be added to a particular section of the Assessment Tool. If so, please specify the factor, the reason it should be included, and in which section it should be placed. Similarly, whether the descriptions of the contributing factors should be amended. If so, please specify the factor and the recommended amendments to the descriptions.

(6) How can the QPHA insert be improved to provide for the QPHA to conduct a robust fair housing analysis and set meaningful fair housing goals when collaborating with a State.

(7) Whether the Small Program Participant insert will facilitate collaboration among States and smaller local governments (those that receive $500,000 or less in CDBG and HOME consortia whose members receive $500,000 or less in CDBG funding or no CDBG funding, both in the most recent year before the collaborative AFH is due), and whether the insert will provide for these small program participant to conduct a robust fair housing analysis and set meaningful fair housing goals.

(8) Whether there are other areas of analysis that are particularly unique to States such that they should be required to consider them as part of their AFH in order to conduct a meaningful fair housing analysis. If so, please explain why these areas of analysis should be included in the AFH.

(9) Whether any alternative or additional questions should be included to address the unique geography of Insular Areas and the fair housing issues they may be experiencing. If so, please provide specific questions and the reasons they should be included in the AFH.

(10) Whether the questions in the Disparities in Access to Opportunity section, as revised, more appropriately reflect the scope States should be required to analyze while still providing for a meaningful assessment of disparities in access to opportunity by protected class.

(11) Whether the revised questions at the end of each section of the Assessment Tool better reflect the analysis States should be required to

conduct when assessing fair housing issues in their jurisdiction.

(12) Native American considerations. Indian tribes receiving HUD assistance are not required to comply with AFFH requirements. However, under certain HUD programs, grantees that are subject to AFFH requirements also provide assistance to tribal communities on reservations. For example, under the HOME program, a State may fund projects on Indian reservations if the State includes Indian reservations in its Consolidated Plan. Does the Assessment Tool adequately take into account, including in the terminology used, the issues and needs of Indian families and tribal communities while also factoring in the unique circumstances of tribal communities?

(13) Organization of contributing factors. Currently the draft assessment tool lists all contributing factors alphabetically. Should these be organized instead by subject matter?

(14) HUD notes that the term "region" has particular meaning in the context of the AFFH rule, which is that a "region" is larger than a jurisdiction. HUD has explained that States have the flexibility to divide their State into smaller geographic areas to facilitate their analysis (so long as the entire State is analyzed), and refers to these smaller geographic areas as "sub-State areas." How can HUD provide additional clarity with respect to the terminology and is the explanation provided in this Notice as well as the Assessment Tool clear as to the meaning of these terms?

(15) HUD solicits public comment on ways HUD can better clarify the responsibilities for QPHAs that choose to participate in collaborations with States where the State is acting as the lead entity for a joint AFH. HUD also solicits comment on how HUD can facilitate such collaborations while ensuring an appropriate fair housing analysis consistent with the AFFH rule. In particular, are there ways that HUD can improve the clarity of the questions and instructions for States and QPHAs when collaborating on an AFH, including any analysis of sub-state areas, that will allow for an appropriate fair housing analysis of all program participants in the collaboration.

(16) How can the QPHA insert, which covers the QPHA's service area, (including HUD-provided maps and data) be improved to facilitate a meaningful fair housing analysis for QPHAs, including those that are in rural areas. What additional guidance can HUD provide to QPHAs to better assist them in establishing meaningful fair housing goals, including how those goals are implemented through actions and strategies, such as, for example through preservation or mobility strategies designed to address the fair housing issues identified by the analysis undertaken.

(16) HUD is generally providing data that is displayed at the County level in the AFFH–T designed for States and Insular Areas. HUD is not requiring States to conduct a neighborhood by neighborhood analysis, but specifically solicits comment on when more granular data (*e.g.*, dot density maps) may be necessary to identify fair housing issues for the State's analysis in the AFH. For example, in what situations would States find a more granular analysis necessary to help identify fair housing issues at a more local level—such as, when a fair housing issue raised during the community participation process that is not present in the HUD-provided data or when the State knows of fair housing issues that are not apparent in the HUD-provided data.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by October 28, 2016 to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–08–B). HUD encourages interested parties to submit comment in response to these questions.

Dated: September 23, 2016.

Bryan Greene,

General Deputy Assistant Secretary for Office of Fair Housing and Equal Opportunity.

[FR Doc. 2016–23449 Filed 9–27–16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 188 September 28, 2016

Part III

The President

Proclamation 9500—National Hunting and Fishing Day, 2016
Proclamation 9501—National Public Lands Day, 2016
Proclamation 9502—Gold Star Mother's and Family's Day, 2016

Federal Register
Vol. 81, No. 188
Wednesday, September 28, 2016

Presidential Documents

Title 3—

The President

Proclamation 9500 of September 23, 2016

National Hunting and Fishing Day, 2016

By the President of the United States of America

A Proclamation

Hunting and fishing have endured as cherished traditions for generations. Whether for sport, sustenance, or both, these activities provide opportunities for Americans to connect with those around them—from tribal elders sharing sacred practices to parents spending time outdoors with their children. On this day, as we celebrate America's hunters and fishers for the ways in which they have strengthened our communities, we also honor their call to serve as good stewards of our lands and waters.

Anglers and hunters were some of the earliest conservation leaders, and they remain key partners in safeguarding the important recreational opportunities provided by our unparalleled natural spaces. Caring for our environment is critical for supporting hunting and fishing, and today we recognize the growing urgency of conserving our Nation's lands, waters, and ecosystems so that more Americans can enjoy all they have to offer. That is why I continue to call on the Congress to permanently fund the Land and Water Conservation Fund, which has helped create new opportunities for hunting and fishing.

Outdoor areas across America are renowned for their beauty and for the wealth of recreational activities they support. To secure this legacy, my Administration has protected more acres of public lands and waters than any other in our Nation's history—and this past summer, I established the Katahdin Woods and Waters National Monument, which preserves access to hunting. And at national wildlife refuges, in forests, and on public and private lands throughout our country, we have expanded opportunities for Americans to hunt, fish, and reconnect with nature.

Hunting and fishing strengthen local economies, provide sustenance, and help Americans experience the outdoors. By enriching our communities and bringing people together, hunters and anglers have carried forward traditions dating back to long before our Nation's founding. On National Hunting and Fishing Day, we recognize the majestic landscapes that make these activities possible for Americans around our country. As we acknowledge the important cultural heritage surrounding hunting and fishing, let us vow to protect our Nation's remarkable outdoor spaces for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 24, 2016, as National Hunting and Fishing Day. I invite all Americans to observe this day with appropriate activities in our great outdoors.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–23631
Filed 9–27–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9501 of September 23, 2016

National Public Lands Day, 2016

By the President of the United States of America

A Proclamation

Nothing can truly capture the beauty and majesty of America's expansive landscapes and wide-open acres. On National Public Lands Day, Americans from coast-to-coast celebrate these spaces by participating in the largest single-day volunteer effort to restore and enhance the lands we all enjoy. Volunteers will remove litter and invasive plant species, blaze new trails and maintain existing ones, and plant seeds that will grow in the years to come—taking full advantage of the chance to give back to the lands that have given us all so much.

Our public lands reflect our shared history, and enable us to connect to each other and to something bigger than ourselves. National Parks, forests, wildlife refuges, conservation lands, and marine sanctuaries not only strengthen our economy through tourism and provide endless recreational and educational opportunities, but are also home to important biodiversity and rich ecosystems. I am proud that my Administration has protected hundreds of millions of acres of these vital lands and waters—more than any Administration in history. Through the America's Great Outdoors Initiative, we have also promoted innovative, community-level efforts to conserve outdoor spaces and reconnect Americans with nature. And through the 21st Century Conservation Corps, we have worked to inspire millions of young adults and veterans to engage in hands-on service in the great outdoors.

On National Public Lands Day, all federally managed public lands and waters are offering free admission so Americans can observe this day not just by caring for these spaces, but by enjoying their vast wonders. To ensure more young people can discover our great outdoors, my "Every Kid in a Park" initiative is again giving fourth grade students and their families free access to all National Parks and other Federal lands for an entire year. And as the National Park Service celebrates 100 years of preserving and protecting these important spaces, we are encouraging more Americans to "Find Your Park" and explore the extraordinary parks and public lands in their communities.

As stewards of our environment and caretakers of these public lands, we must build on our legacy of conservation. Climate change poses the single biggest threat to our natural resources. Across our country, we are experiencing stronger storms, harsher droughts, increased flooding, and longer wildfire seasons that put these public spaces at risk—which is why any effort to fully combat climate change must include protecting our land, water, and wildlife. Let us rededicate ourselves to this critical work and continue looking after these natural treasures and protecting our historic and cultural heritage for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 24, 2016, as National Public Lands Day. I encourage all Americans to participate in a day of public service for our lands.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–23632
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Presidential Documents

Proclamation 9502 of September 23, 2016

Gold Star Mother's and Family's Day, 2016

By the President of the United States of America

A Proclamation

Since our Nation's founding, in peace and in war, the values that define our brave men and women in uniform have remained constant: honor, courage, and selflessness. From the deafening sounds of combat to the silence of the sacred hills at Arlington, we remember the countless sacrifices our service members make to preserve the freedoms we too often take for granted. No one understands the true price of these freedoms like our Gold Star families, whose humility, even in times of grief, represents the best of our country. Today, we recognize their sacrifices by listening to their stories, sharing in their pain and pride, and pledging to do all we can to honor them and the loved ones they hold close in their hearts.

Through unspeakable sorrow, our Gold Star families suffer from loss that can never be restored—pain that can never truly be healed. It is because of their selfless character and unfailing grace that Americans can come home each day, gather with family and friends, and live in peace and security. And though the debt our fallen soldiers and their families pay is one we can never fully pay back, we must continue to support our veterans when they come home and stand by our military families who endure unthinkable loss. We must maintain the sacred covenant we share with our veterans by ensuring they have the care and benefits they deserve, and as citizens, we must all work to lift each other up in a manner that is worthy of those who laid down their lives to protect the land and freedoms we cherish.

Less than one percent of our Nation wear the uniform, but all of us have an obligation to acknowledge the losses endured by Gold Star Mothers and Families and to fill the painful absence of their loved ones with our profound gratitude. We must strive to support these families—not just with words, but with actions—by being there every day for the parents, spouses, and children who feel the weight of their loss. On this day of remembrance, may we carry forward the work of those who gave their last full measure of devotion and vow to keep their memories burning bright in our hearts. And may we lift up their families, who have steadfastly supported their mission through immeasurable heartbreak, by remaining a Nation worthy of their sacrifice.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1985 as amended), has designated the last Sunday in September as "Gold Star Mother's Day."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 25, 2016, as Gold Star Mother's and Family's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this special day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's gratitude and respect for our Gold Star Mothers and Families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–23634
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Federal Register

Vol. 81, No. 188

Tuesday, September 28, 2016

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Federal Register/Code of Federal Regulations	
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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
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Public Laws Update Service (numbers, dates, etc.)	**741–6043**

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

60235–60580	1
60581–61098	2
61099–61582	6
61583–61972	7
61973–62352	8
62353–62602	9
62603–62808	12
62809–63050	13
63051–63360	14
63361–63670	15
63671–64048	16
64049–64344	19
64345–64758	20
64759–65168	21
65169–65530	22
65531–65852	23
65853–66178	26
66179–66486	27
66487–66790	28

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1400	65853
2800	61981

3 CFR

Proclamations:	
9479	61973
9480	61975
9481	61977
9482	61979
9483	62347
9484	62349
9485	62351
9486	62599
9487	63351
9488	63353
9489	63355
9490	63357
9491	63359
9492	63671
9493	64049
*	
9495	64757
9496	65161
9497	65169
9498	65171
9499	65173
9500	66785
9501	66787
9502	66789
Executive Orders:	
12473 (amended by 13740)	65175
13396 (revoked by 13739)	63673
13739	63673
13740	65175
Administrative Orders:	
Notices:	
Notice of August 30, 2016	60579
Notice of September 15, 2016	64343
Presidential Determinations:	
No. 2016–10 of September 12, 2016	64749
No. 2016–11 of September 13, 2016	64047

5 CFR

870	60235
2417	63361
2640	61099
Proposed Rules:	
1800	60649
9801	61628

6 CFR

27	62353
Proposed Rules:	
5	60297

7 CFR

56	63675
210	66487
215	66487
220	66487
225	66487
226	66487
227	66487
235	66487
240	66487
246	66487
247	66487
248	66487
249	66487
253	66487
272	66487
273	66487
274	66487
276	66487
277	66487
930	63676
983	63679
987	64759
1150	62809
1493	65510
1499	62603
1599	62614
1780	63051
1940	66500
Proposed Rules:	
923	64785
981	62668
984	63718, 63721
989	63723
999	63723

8 CFR

214	60581
236	62353
238	62353
239	62353
240	62353
241	62353
270	62353
274a	62353
280	62353
287	62353

9 CFR

Proposed Rules:	
11	65307

10 CFR

171	61100
430	61982
900	66500
Proposed Rules:	
429	60784, 64580, 65720
430	60784, 65720
431	62980, 64580

951...66199

12 CFR

217...63682
602...63365

Proposed Rules:

7...63428
51...62835
1231...64357
1263...66545

13 CFR

123...63366

Proposed Rules:

107...64075
121...66199
311...64787
312...64805

14 CFR

25...60236, 60240, 60241, 63051
39...60243, 60246, 60248, 60252, 60582, 61102, 61983, 61985, 61987, 61990, 61993, 61996, 61999, 63367, 63370, 63374, 63688, 63691, 64051, 64053, 64057, 65265, 65857, 65860, 65864, 65872, 66513, 66516, 66518, 66524
61...61583
71...62002, 62003, 62807, 62810, 65267, 65269, 65270, 65274, 65276, 65278, 65531, 65532, 65533, 65535, 66179, 66180
91...61583
93...62802, 62811
135...61583
145...65874

Proposed Rules:

25...64360
39...62022, 62024, 62026, 62029, 62031, 62035, 62037, 62668, 62672, 62676, 62679, 62845, 63433, 63725, 64080, 64083, 65307, 65577, 65579, 65581, 65980, 66553
71...62040, 62041, 62044, 65583, 66221
73...62847
193...64085
382...61145

15 CFR

730...60254, 64656
732...60254
734...60254, 64656
736...60254
738...60254, 64656
740...60254, 64656
742...60254, 64656
743...60254, 64656
744...61595, 64694
746...60254
747...60254
748...60254, 61104, 64656
750...60254
754...60254
756...60254
758...60254
760...60254
762...60254
764...60254
766...60254
768...60254
770...60254, 64656
772...60254, 64656
774...60254, 64656

Proposed Rules:

2004...65309, 65586

16 CFR

305...63634
701...63664
702...63664
803...60257

Proposed Rules:

Ch. II...60298
305...62681
314...61632
682...63435
1500...61146

17 CFR

37...64272
38...64272
39...64312
49...64272
Ch. I...63376
240...60585
275...60418, 66526
279...60418

Proposed Rules:

4...61147
Ch. II...64364
229...62689
232...62689
239...62689
249...62689
275...60651, 60653

18 CFR

Proposed Rules:

40...66555
806...64812
808...64812

19 CFR

165...62004

Proposed Rules:

111...63049

20 CFR

404...64060, 65536, 66138
416...64060, 65536, 66138

Proposed Rules:

404...62560
416...62560

21 CFR

17...62358
20...62004
25...62004
101...66527
117...64060
170...62004
184...62004
186...62004
310...61106
507...64060
558...63053
570...62004
878...64761
886...65279
1308...61130, 66181

Proposed Rules:

15...60299
73...63728
101...66562
1300...63576
1301...63576
1302...63576
1303...63576
1304...63576
1308...61636, 63576, 66224
1309...63576
1310...63576
1312...63576
1313...63576
1314...63576
1315...63576
1316...63576
1321...63576

22 CFR

42...63694
51...60608, 66184
120...62004
125...62004
126...62004
130...62004
240...65281

Proposed Rules:

22...64088
96...62322
212...66227

23 CFR

Proposed Rules:

Ch. 1...63153
450...65592

24 CFR

5...64763
100...63054

Proposed Rules:

35...60304
203...66565
234...66565

26 CFR

1...60609, 62359, 64061, 65541, 65542
20...60609
25...60609
26...60609
31...60609
301...60609
602...65542

Proposed Rules:

1...63154, 65983, 66576
301...63154, 65983

27 CFR

9...62626

Proposed Rules:

4...62046
9...62047, 64368
24...62046

28 CFR

66...61981
70...61981
104...60617

Proposed Rules:

0...63155
16...64092
44...63155

29 CFR

1910...60272
1915...60272
1926...60272
1986...63396
4007...65542
4022...63414
4044...63414

Proposed Rules:

1915...62052
2520...65594
2590...65594
4000...64700
4001...64700
4003...64700
4041...64700
4041A...64700
4050...64700

30 CFR

250...61834
800...61612

31 CFR

34...66529

32 CFR

66...64061
103...66185
105...66424
199...61068, 63695
252...61615
269...62629
553...65875
706...62008
1909...64063
2002...63324

Proposed Rules:

50...60655

33 CFR

27...62353
100...62365, 63075, 63695, 63697, 63698, 64345
117...60620, 60621, 61615, 62366, 62367, 62368, 63700, 64347, 65283, 65545, 65548, 65888
165...61133, 61616, 62010, 62368, 62371, 63075, 63098, 63416, 63418, 64266, 64268, 65284, 65549, 65889, 66530

Proposed Rules:

100...61148, 63437
110...61639
165...60663, 63728

34 CFR

Ch. I...63099
222...64728
Ch. III...62631

Proposed Rules:

200...61148

36 CFR

223...65891

37 CFR

202...62373
387...62812

Proposed Rules:

201...63440
204...63440

38 CFR

17...62631
36...65551
38...65286
42...65551

Proposed Rules:

3...62419

38.....65313

39 CFR

Proposed Rules:

501.....61159
3015.....63445
3060.....63445

40 CFR

52.....60274, 62373, 62375, 62378, 62381, 62387, 62390, 62813, 63102, 63104, 63106, 63107, 63701, 63704, 63705, 64070, 64072, 64347, 64349, 64350, 64354, 65286, 65897, 65859, 66189, 66332, 66532, 66538
55.....62393
63.....63112
70.....62387
81.....61136, 62390, 65289
127.....62395
130.....65901
180.....60621, 61617, 63131, 63707, 63710, 65289, 65552, 65917
228.....61619
300.....62397
711.....65924

Proposed Rules:

52.....60329, 62066, 62426, 62849, 63156, 63448, 63732, 63734, 64372, 64377, 65286, 65595, 66578, 66591, 66596, 66602
55.....62427
70.....62426
81.....66240, 66578, 66602, 66617
97.....63156
131.....63158
300.....62428, 65315

41 CFR

102–74.....63134
102–117.....65296
102–118.....65296
Ch. 109.....63262
301–11.....63134
301–51.....63137
301–70 (2 documents).....63134, 63137

42 CFR

3.....61538
8.....62403, 66191
11.....64982
73.....63138
102.....62817
402.....61538
403.....61538, 63860
411.....61538
412.....61538
416.....63860
418.....63860
422.....61538
423.....61538
441.....63860
460.....61538, 63860
482.....63860
483.....61538, 63860
484.....63860
485.....63860
486.....63860
488.....61538
491.....63860
493.....61538
494.....63860
1003.....61538

Proposed Rules:

59.....61639
88.....60329
455.....64383
1007.....64383

43 CFR

10.....64356
3000.....65558

Proposed Rules:

2.....64401
100.....65319

44 CFR

Proposed Rules:

9.....64403

45 CFR

79.....61538
93.....61538
102.....61538
147.....61538
150.....61538
155.....61538
156.....61538
158.....61538
160.....61538
303.....61538
Ch. XIII.....61294

Proposed Rules:

144.....61456
146.....61456
147.....61456
148.....61456
153.....61456
154.....61456
155.....61456
156.....61456
157.....61456
158.....61456

46 CFR

106.....63420

47 CFR

1.....65926
20.....60625
51.....62632
63.....62632
64.....62818, 65948
73.....62657, 65304
90.....63714, 66538

Proposed Rules:

1.....65597
73.....62433
90.....64825, 65597, 65984

48 CFR

210.....65563
212.....65563
213.....65563
216.....65563
227.....65563
236.....65565
252.....65563, 65565, 65567
1816.....63143
1832.....63143
1842.....63143
1852.....63143

Proposed Rules:

Appendix I to Ch. 2.....65610
49.....63158
211.....65606
212.....61646
215.....65606
219.....65606, 65610
227.....61646
242.....65606
252.....61646, 65606
501.....62434
511.....62434
515.....62445
517.....62434
532.....62434
536.....62434
538.....62445
543.....62434
546.....62434
552.....62434, 62445

49 CFR

Appendix G to Subchapter B of Ch. III.....60633
393.....60633, 65568, 65574
395.....65574
661.....60278
1503.....62353

Proposed Rules:

107.....61742
171.....61742
172.....61742
173.....61742
175.....61742
176.....61742
178.....61742
180.....61742
390.....66243
391.....62448
393.....61942
541.....64405
571.....61942
577.....60332
613.....65592
Ch. X.....61647
1201.....65987
1242.....65987

50 CFR

17.....62657, 62826, 65466
20.....62404
216.....62010, 62018
223.....62018, 62260
224.....62018, 62260
424.....66462
622.....60285
635.....60286
648.....60635, 60636, 65305, 66197
660.....60288
665.....61625, 63145, 64356
679.....60295, 60648, 61142, 61143, 62659, 62833, 63716, 64782, 64784, 65305

Proposed Rules:

17.....61658, 62450, 62455, 63160, 63454, 64414, 64829, 64843, 64857, 65324
217.....61160
223.....64094, 64110
224.....64110
622.....62069, 66244
635.....65988
648.....60666, 64426, 66245
660.....61161
680.....62850, 65615

* **Editorial Note:** Proclamation number 9494 will not be used because a proclamation numbered 9494 appeared on the Public Inspection List on Friday September 16, 2016, but was withdrawn by the issuing agency before publication in the **Federal Register**.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List September 27, 2016

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